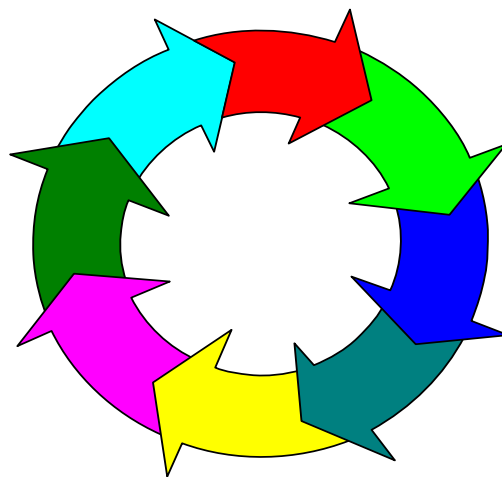


Coalition of Federal Ombudsmen

A UNIFIED MODEL FOR DEVELOPING AN OMBUDSMAN FUNCTION



Website: <http://www.federalombuds.ed.gov/>

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EXECUTIVE SUMMARY

In recent years, as the value of an ombudsman program has become apparent, many governmental, private sector, and academic organizations have chosen to design and implement a program. The reasons for this development are varied and are discussed in Chapter 2 of this manual. Simply stated, almost any organization can benefit from the informal dispute prevention and resolution processes offered by Ombudsmen. Benefits include improved organizational performance, avoidance of costly formal actions, correction of systemic problems and improved employee morale. Numerous psychological studies have demonstrated that if morale improves, productivity also improves.

This manual provides a roadmap for structuring and implementing ombudsman programs that are an organizational “best fit” whether the program is a workplace program or oriented toward external parties. The model is most effectively applied when facilitated by outside ombudsman subject matter experts.

This manual provides a roadmap for structuring and implementing an ombudsman program that is an organizational “best fit” whether the program is a workplace program or oriented toward external parties.

CHAPTER 1: DESCRIPTION OF THE MODEL

A. Structure of the Model

An effective ombudsman function can be developed for almost any organization, but there is no single program structure appropriate for all (or even most) organizations.

There is, in fact, a large array of possible organizational ombudsman program structures.

Ombudsman programs must be carefully tailored to properly fit the specific culture and needs of each organization.

B. Using the Model

The model offers an active, participatory approach for organizations that wish to develop an ombudsman function. It recognizes that the project team best qualified to determine an effective ombudsman program structure at any given organization includes the people who work for that organization in consultation with external ombudsman experts. The people who work for an organization are the ones who best understand the organization's vision, mission, culture, and overall business environment. In applying the model, an appropriate project team can design a unique program structure with a high probability of success. The process enables an organization to make sound decisions regarding the structure of their ombudsman program so that it is both appropriate for complaint and problem resolution needs, and integrated into existing business programs and formal problem resolution processes. A logical and practical ombudsman program is built through informed implementation of specific principles (neutrality, confidentiality, independence, etc.) by experienced personnel from that organization with the assistance of experienced ombudsman practitioners.

The project team best qualified to determine effective program structure at any organization includes the people who work for that organization in consultation with external experts.

CHAPTER 2: VALUE-ADDED BY THE OMBUDSMAN FUNCTION

A. Identifying the Value-Added.

The importance of establishing and communicating the value that an ombudsman program adds to the overall organization cannot be exaggerated. In today's business environment, right-sizing, downsizing, economizing and outsourcing seem to be the rule. It is absolutely essential to the effectiveness and survival of the new program that products and services that add value to the organization are both implemented and communicated throughout the organization. In this connection, at some point the ombudsman organization should undertake development of a cost-benefit process. An approach to ombudsman cost-benefit analysis is included at Appendix B.

It is absolutely essential to the effectiveness and survival of the new program that products and services that add value to the organization are identified.

B. The Program Charter

To a great extent, the products and services that an Ombudsman organization provides are determined and driven by the nature of the ombudsman charter or mandate. The charter is a formal document that documents the existence of the office and establishes it. Approved by Congress, the organization's Chairman, Director, President, Administrator or other top official, it formally establishes the office, describes its mission and functions, specifies Ombudsman "deliverables" (products and services) and creates (ideally) a direct reporting line to the organization's top manager. The ombudsman program charter may limit the ombudsman to internal or external callers/visitors, a specific business area (or several) or a specific area of need

(contracting); or the charter may implement a broad program providing many services to both internal and external contacts simultaneously. It depends on the charter!

C. Products and Services

Chief among value-added ombudsman products and services are dispute *prevention* and dispute resolution, conflict management and problem resolution. From an organization-wide perspective, creation of an ombudsman program sends a strong message to customers and employees that management 1) cares about them, and 2) seeks to provide effective and equitable dispute resolution. In addition, there are many other ombudsman products and services that add value, save resources, and contribute substantially to the organization.

From an organization-wide perspective, creation of an ombudsman program sends a strong message to customers and employees that management cares about them.

The products and services offered by an ombudsman program will vary from organization to organization and so will the specific types of value. They depend on the ombudsman charter, internal or external role, pre-existing conflict management services offered, reporting level, degree of management support, union/non-union environment, type of ombudsman (classical/organizational), operating environment (bureaucratic, unstructured) and other factors. The specific program notwithstanding, Ombudsman programs, if implemented carefully, can add value to management, the organization, and customer groups.

The ombudsman provides products and services to managers, the organization, and customer groups.

1. Management Services

- a. Serve as an “early warning system” for managers. When process or policy problems are identified early, they can often be resolved before they become acute, thus preventing major disruptions. There is a much higher probability that problems will be resolved to the satisfaction of many when they are addressed at an early stage. In addition, when problems are identified early, they can often be resolved before productivity suffers or profit declines.
- b. Provide an office that managers/officials can approach for neutral assistance. The ombudsman can confidentially (no identifiers) provide useful feedback or reporting on business products and services (to the extent it is captured in the ombudsman data base tracking system).
- c. Through informal facilitation or mediation, help avert actions that can be extremely costly and damaging to the workplace, such as litigation or violence in the workplace.
- d. Help increase awareness of key issues or problems in the organization. When trends emerge, they can be shared with managers through routine reporting, as long as confidentiality is preserved, as appropriate.
- e. Make recommendations (workplace or business-oriented) that managers can use to take appropriate actions, that otherwise they would not have known were needed.
- f. Provide mechanisms for confidential feedback on operating programs. Organizations can request that the ombudsman provide confidential focus groups or facilitation services that will provide feedback on operating programs that would not otherwise have been available.
- g. Identify rumors that can be addressed through management communications. Serve as an information resource regarding rumors and assist management in providing information to employees.

2. Customer Services

- a. Provide an identifiable and accessible focal point for receiving complaints of any kind. This enhances trust of the organization by both employees and customers (depending on the focus of the ombudsman program). The ombudsman’s guarantees of confidentiality (to the limits of the law) with no fear of reprisal, and neutrality are unique services.
- b. Enhance morale and increase productivity (internal programs).
- c. Establish an informal channel of inquiry for those contacts who do not wish to pursue a formal channel. Informal channels are usually quicker, less disruptive or costly compared to more complicated and lengthy formal channels.
- d. Channel people to the correct process or formal procedure (outside of the ombudsman role), when appropriate, if the inquirer does not know what options are available.
- e. Provide services to all with no regard for position or type of issue (customers, employees, management, contractors, regulated

- entities, etc).
- f. Furnish a channel of access to records and management officials to those who are not aware of their options.
- g. Provide a location where individuals can “be heard.” A frequent component of dissatisfaction, low morale and violent acting out is a perception of “never having been heard.”
- h. Provide a neutral source of confidential assistance for all types of problems (e.g. service-driven (customer), management, peer-to-peer, organizational) that is interest-driven rather than rights-driven.
- i. Provide inquirers or customers a place of last resort, when other recognized problem assistance processes have failed.

3. Organizational Services

- a. Provide a source of assistance for all business and administrative areas. The ombudsman’s charter, if drafted properly, prevents organizational isolation. He/she can assist all or several parts of the organization simultaneously or independently on a one-to-one basis.
- b. Review and resolve problems that cut across administrative or business functions, and recommend a broad or cross-functional remedy if a generalized problem or systemic difficulty emerges.
- c. Save the organization significant resources by enabling the organization to eliminate unfair processes and improve inefficient business/administrative processes.
- d. Be recognized as an “authority” that can evaluate issues, and recommend options after an impartial review of the matter (sometimes the fact that a review is occurring leads to a resolution of the problem).
- e. Create trust. The existence of an effective ombudsman function sends a strong message that management is serious about problem prevention and resolution. This alone can sometimes enhance morale and increase productivity.
- f. Support quality control through identification and resolution of systemic or process problems.
- g. Provide a means of internal control. Areas of vulnerability can be identified and corrections implemented before severe difficulties arise (e.g. accounting, contracting or auditing abuse; violence in the workplace; discrimination, litigation, productivity, etc.).
- h. Help reduce the severity of penalties to the organization that may result from litigation (private sector). If litigation is pursued, monetary penalties recommended by the Uniform Sentencing Guidelines can be significantly reduced when an ombudsman function is in place and operating effectively. An established ombudsman program demonstrates the intent of the organization to prevent problems and resolve disputes fairly and in a timely and effective manner. This established and verifiable intent may result in substantially reduced penalties in the event of a negative court ruling.

- i. Save valuable resources by preventing disputes and resolving them informally in lieu of costly litigation.
- j. Improve the image of the organization. No matter the outcome, inquirers are left with the conviction that a fair “hearing” has taken place.
- k. Assist other organizational components (e.g. EEO, union, EAP, etc.) when problems fall outside their role (e.g. communication issues, peer-to-peer work problems, teamwork issues, etc.).

4. Options

The products and services mentioned in the context of value are options that may be built into the basic ombudsman program (internal or external) and documented in the ombudsman charter. Depending on the individual organization, they may or may not be appropriate or achievable. Specific services should be included in the ombudsman charter only after careful consideration of how they will be integrated into the current organization. For example, if an organization’s human resources area offers facilitation services for meetings, then the ombudsman may choose not to; similarly, if mediation for specific issues is already available under the auspices of a mediation program, then the ombudsman role may not need to include that service. The next chapter provides an overview of basic ombudsman program components that should, at a minimum, be considered *before* the program is implemented.

Specific services should be included in the ombudsman charter only after careful consideration of how they will be integrated into the current organization.

CHAPTER 3: KEY PROGRAM DEFINITIONS AND VALUES

Introduction: Only in recent years has the ombudsman profession become prevalent in the United States. The role as we know it has existed since 1809 when the Swedish legislature (the Riksdag) created a “citizen’s protector” to investigate citizen complaints against the government. In this country, the role of ombudsman varies to a great extent. Customer or contact groups vary considerably across organizations. How the ombudsman is selected, the functions he/she performs, and even what the ombudsman is called can stray significantly from the original Swedish concept. Although these variations exist, there are certain commonalities that are shared across ombudsman practitioners. The purpose of this Section is to discuss the history of the profession briefly, the types of ombudsmen, and the traits that are shared by all those who are generally recognized as ombudsmen.

Ombudsman: An Ombudsman is a neutral party who is trained to confidentially, neutrally and independently prevent or resolve problems, complaints or issues brought to him/her by individuals or groups, and to bring about systematic change where needed.

Although there is variation across ombudsmen functions, there are certain critical elements shared by all ombudsman programs.

Types of Ombudsmen: There are two *major* types of ombudsmen generally recognized: classical and organizational. Some characteristics of the 2 major types appear below. For an excellent description of some of the diverse ombudsman designations, refer to the ABA Ombudsman Standards.

a. Classical:

- Created by law;
- Generally appointed by legislative bodies;
- Receive complaints about acts of government agencies;
- Designated neutrals;
- Often have the power of subpoena; and
- Perform formal investigations

b. Organizational

- May or may not be created by law;
- Not appointed by legislative bodies;
- Often serve internal staff;
- May serve external parties [e.g. clients of the organization, or in the case of government, a regulated group];
- Handle problems and complaints informally;
- Designated neutrals; and
- Perform informal reviews – do not investigate.

c. Other Types (as identified by the ABA...and others)

- Legislative
- Executive
- Advocate
- Long-Term Care
- Acquisition Ombudsmen

B. Program Components:

- i. **Neutrality:** The importance of neutrality to the ombudsman role cannot be over-emphasized. There is no room to “bend” neutrality. If the program structure allows for “representation of” or “taking the side of” any inquirer, it is departing from generally accepted ombudsman practice, and therefore, strictly speaking, is not an ombudsman program. Ombudsmen can “take the side of” fair process, but absolutely cannot become the representative of any contact or “take the side of” an inquirer. A clear understanding of neutrality is essential, and it must be actively applied at all times when one functions in the role of an

ombudsman. All ombudsmen, both organizational and classical, strictly adhere to neutrality.

If a program structure allows for “representation of” or “taking the side of” any inquirer, it is departing from generally accepted ombudsman practice.

- ii. **Informality:** Informality is vital to the role of an organizational ombudsman and the success of the program. There is a unique flexibility inherent in organizational ombudsman work since the ombudsman is contacted prior to the point where parties have assumed a public commitment regarding the issue/s. There is greater opportunity to gather information and explore options at this point because contacts have not committed themselves to a particular avenue or strategy. Any findings, recommendations, or actions can be explored in an informal manner. Organizational ombudsmen distance themselves from inquirers or issues that are in formal process, since it can result in requests for information (e.g. discovery, subpoena, FOIA, Privacy Act, etc.) that may compromise confidentiality. Note that classical ombudsmen typically offer formal mediation, engage in formal processes and develop formal, public reports.
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Ombudsman work has a unique flexibility since the Ombudsman is contacted prior to the parties assuming a public commitment.

- iii. **Confidentiality:**
 - a. Establishing and maintaining confidentiality is of critical importance to the ombudsman. Many times, assurance of confidentiality is the sole reason contacts will call the ombudsman’s office. As an alternative to other more formal processes, assurance of confidentiality

along with neutral assessment of issues and disputes are characteristics that make the ombudsman function unique. Ways in which an ombudsman can endeavor to preserve confidentiality include:

- i. Avoiding the creation of any records unless absolutely necessary to conducting business;
 - ii. Maintaining records that cannot be accessed by name or personal identifier;
 - iii. Discarding informal notes and other non-record materials related to case issues once they have been resolved.
 - iv. Maintaining a code of silence about who is or isn't using the Ombudsman Office; and
 - v. Refusing to testify (to the extent possible) if the case subsequently goes into litigation.
- b. The resolve of confidentiality also applies when the ombudsman is requested to come forward to testify in a court of law. Many ombudsmen have found themselves in a difficult situation by refusing to obey such a request. This is why it is vital for any organization to carefully consider the issue of confidentiality early in the ombudsman program development cycle. Ombudsmen recognize the value of confidentiality and attempt to uphold it even in a court of law.
- c. Confidentiality then, is an ombudsman value that makes the ombudsman role unique, and which is often not offered by other, more formal processes. Formal dispute processes do not guarantee confidentiality under all circumstances as does the ombudsman (except in cases of harmful or illegal activity). This is a vital difference, which is indispensable to the role of the ombudsman, since maintaining confidentiality is essential to eliminating the possibility of retribution or retaliation toward the contact.
- d. Although ombudsmen strive to maintain absolute confidentiality regarding contact, the standards of practice within the ombudsman profession have resulted in one exception to this pledge of

confidentiality. An ombudsman will not hesitate to report any threat to someone's physical safety. If there is a serious threat to property, it will be reported. In the federal government, evidence of criminal activity, waste, or abuse of power, are reported to the Inspector General. When people contact the Office of the Ombudsman for assistance, they should be apprised of these exceptions to absolute confidentiality.

- e. Classical ombudsmen also maintain confidentiality, but offer formal mediation, including identifiers, and participate in formal processes. They also develop reports that include specific information related to parties, process and recommendations.

Many times, assurance of confidentiality is the sole reason that an individual will call. Ombudsmen recognize the value of confidentiality and uphold it even in a court of law.

- iv. **Independence:** An enabling attribute of an effective ombudsman is that he/she serves as an independent source of assistance. This means that the ombudsman is not dependent upon, nor does he/she report to functional managers or programs within the organization. This programmatic independence also ensures that the ombudsman has no conflict of interest. Since the ombudsman does not report to the organization's business offices, it is unlikely that he/she will be influenced by the statements or activities of the senior managers in those offices. A related question, then, is "Who does the ombudsman report to?" The consensus of the ombudsman community is that the ombudsman function is much more effective if the ombudsman reports to a top-level manager. Since the ombudsman typically has no direct line authority, or decision making authority, the higher that he/she reports, the more effective he/she will be. Classical ombudsmen, like organizational ombudsmen, are independent of other organizational components and report to a high level official within the government, such as a state governor (U.S.), or a republic's President or

Parliament (non-U.S.).

Programmatic independence ensures that the ombudsman has no conflict of interest. The ombudsman does not report to the organization's business offices, so it is unlikely that he/she will be influenced by the statements or actions of the senior managers of those offices.

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CHAPTER 4: DEVELOPING & EXECUTING AN OMBUDSMAN PROGRAM

A. The Ombudsman Program Development Project: An effective ombudsman program is carefully researched, planned, and implemented like any systems project. The project is an effort to meet the unique problem resolution and conflict management requirements of the organization. All key program elements (such as neutrality, confidentiality, independence, reporting level, etc.) are carefully reviewed by the organization's project team, management, and the ombudsman program owner to identify what form the elements will take and how the organization intends to incorporate them into the final program structure. As with any systems development effort, the organization's program requirements must be accurately identified and documented, the system must be methodically designed and implemented, program assessment must be undertaken, and refinements must be made. Implementation of a preconceived ombudsman program that is not properly tailored to the culture of the organization will meet with resistance and provide limited value to clients or the organization.

The Ombudsman Program Development Project is an effort to meet the unique problem resolution and conflict management needs of the organization.

- i. **Using the Model:** This model provides an active, participatory strategy for developing or refining an ombudsman function. The model is best applied with the assistance of a trained, third party facilitator or consultant, who is conversant with the principles of ombudsmanry. The approach recognizes that the people who are best qualified to define an effective ombudsman structure in any given organization are the people

who work for that organization. They are the ones who best understand the organization's mission, vision, culture, and overall business environment. The goal of the model is to achieve an ombudsman program "best fit" which will be certain to achieve buy-in from that organization's top managers. The process enables an organization to make sound decisions regarding the structure of their ombudsman program so that it will:

- a. Incorporate the prerequisites of an ombudsman program (neutrality;
- b. programmatic independence and confidentiality);
- c. Meet customer needs;
- d. Add mission-related value;
- e. Fit within the established organizational structure;
- f. Avoid cost; and
- g. Provide needed services to business functions.

The people who are best qualified to define an effective ombudsman program for any given organization are the people who work within that organization.

- ii. **Components of the Model:** The model consists of four major components: 1) Review of the key components of an ombudsman function; 2) Developing and implementing an organizational ombudsman program; 3) Program operations; 4) and Maintaining and refining the Program. The model represents a complete ombudsman program life cycle that begins with the program concept and includes: definition of ombudsman requirements, program development, implementation of operations, and program assessment and refinement within the context of the individual organization.

The model is a complete ombudsman program life cycle that begins with the program concept and includes definition of key program elements, program design, operations, and refinement.

- iii. **Key Components:** At the initiation of the program and as program priorities evolve, review of key ombudsman program elements (neutrality, informal process, confidentiality and independence) should be undertaken. The review should include all major stakeholders. Chapter 3 includes a brief discussion of some of the major aspects of these elements. Following this review, the organization can identify if the current weight and direction of the program is effective. Organizations creating a new ombudsman function use this review to determine the form and direction for these key elements.

Review and assessment of key ombudsman program elements should be undertaken periodically and should include all major stakeholders.

- iv. **Developing and Executing the Program:** An effective ombudsman program is carefully researched, planned, and implemented like any systems project. The project must meet the unique problem resolution and conflict management requirements of the organization. All key program elements (such as neutrality, confidentiality, independence, reporting level, etc.) are carefully reviewed by the organization's management team and the ombudsman program owner to identify what form they will take and how the organization intends to incorporate them into the final program structure. As with any systems development effort, the

organization's program requirements must be accurately identified and documented, the system must be methodically designed and implemented, program assessment must be undertaken, and refinements must be made. Implementation of a preconceived ombudsman program that is not properly tailored to the needs of the organization will meet with resistance and provide limited value to the clients or the organization.

Implementation of a preconceived ombudsman program not properly tailored to the needs of the organization will provide limited value to the intended clients of the organization.

- v. **Conducting the Sessions.** Based on experience gained from assisting several organizations in developing and refining their programs, the model strongly encourages securing a skilled facilitator or consultant to guide the development process. This speeds the process and contributes to developing a realistic yet high quality program structure. A facilitator guides the organization's managers through the process illustrated in Table 1 over a period of approximately 1 to 2 days (time frame may vary). As the process moves forward, the decisions of the project team are documented. Products are reviewed as the process moves forward to ensure that everyone agrees with how the program is being defined. Over the course of the development effort an ombudsman program structure is defined that is appropriate to the culture of the individual organization. The facilitator ensures that all important topics are covered, key decisions made, and the draft program approved. After the program is defined, a proposal is sent forward for final management approval, as appropriate.

Table 1 shows the phases that make up the Ombudsman Program

Development process.

Over the course of the development effort an ombudsman program structure is defined that is appropriate to the culture of the individual organization.

Ombudsman Program Design Brainstorming Outline			
Goals	Program Structure	Stakeholders	Mechanics
1. What is the purpose of establishing an ombudsman function? What do you wish to accomplish? 2. What are the outcomes you want to achieve? 3. How will you know the program is successful? – <i>Metrics</i> 4. What are the products and services you will provide?	1. Who are the customers? 2. Roles? 3. Functions? 4. Goals? 5. Mission? 6. Vision? 7. Values? 8. Barriers, opportunities, threats, potential pitfalls. How to avoid/manage. 9. Sacred cows, parameters.	1. Who is critical to your success? 2. What are the existing dispute processes? 3. Buy-in/involvement required of stakeholders for success? 4. Ask customers what they want? 5. Education re: ombudsmanry is needed for stakeholders.	1. Time frames. 2. Plan for design/implementation 3. Protocols and processes. 4. Resources (funding, equipment, telephone, etc.). 5. Policies. 6. Procedures. 7. Training – staff, stakeholders 8. Awareness and Outreach – business areas, customers, employees
Communications Planning – Who, What, When			
<u>Key success factors/characteristics:</u> 1. Clear/reliable support from top management 2. Independent 3. Neutral 4. Confidential 5. No authority 6. Informal option 7. Resources	<u>Stakeholders may include:</u> Inquirers Management Employees Contractors Industry Groups Formal process owners Others?		What is a reasonable and specific planning and implementation schedule for communication?

B. Critical Considerations: As the project team steps through the program development process there are several key program decisions that must be carefully considered. These are discussed below.

Key program decisions must be considered during the development process.

- i. **Management Support.** A program that enjoys the support of top-level management has several important advantages over those that do not. The ombudsman program is immediately legitimized through this top-level buy-in and support. Although the organizational ombudsman does not typically have decision-making authority, this link to top management provides an “informal license” to review and participate in the resolution of difficult or sensitive issues that often cut across organizational lines. In addition, this structure avoids potential conflicts of interest that can arise if the Ombudsman reports to the manager of a single program area (i.e. personnel). Finally, reporting to a management level high within the organization enables the program to adapt or evolve as new issues arise or as the organization changes.

Ombudsman programs that enjoy the support of top management have important advantages over those that do not have such support.

- ii. **Stakeholder Identification.** An effective organization-wide program will include all major stakeholders (e.g. human resources, union, top managers, legal, etc.) in the development of the process. Key requirements will be

identified, operational processes will be discussed and refined, and essential buy-in will be secured.

An effective development project includes all major stakeholders.

- iii. **Program Diversity.** Every ombudsman program is unique. The program development team must seek an ombudsman program “best fit” to correspond as closely as possible to the organization’s culture, to maximize the probability that the targeted ombudsman program objectives are met, and that ombudsman program products and services are provided. An effort to carefully identify and research these program elements, their importance and place within the program, and their overall direction early in the developmental effort is an invaluable investment that will eliminate or diminish setbacks that can emerge as the program begins operation and matures. Major considerations include:
- a. Will the program be an internal or external ombudsman program or a hybrid of the two?
 - b. Will the program serve all potential constituencies or will it serve a designated population?
 - c. What types of services will the program provide?
 - d. What are the occupational needs (e.g. space, staffing, automation, etc.)?
 - e. Will the program provide services to the entire organization or will it operate within one branch or department?
 - f. Is full service implementation practical or does phased implementation make sense?
 - g. Has a schedule been defined? What schedule is “best”?

The Ombudsman program development team must seek an ombudsman program “best fit” to correspond as closely as possible to the organization’s culture.

- iv. **Educating Stakeholders.** Almost any new program that is placed within an existing organization will create suspicion and stress. An important ombudsman task is to educate the offices directly affected by its activities so that suspicion is dispelled and valuable services recognized. If the ombudsman can establish that the activities of the office will actually assist and enhance the performance of other organizational components, these offices will support the ombudsman and look to him/her as part of the team. Effective education of key stakeholders regarding the mission and goals of the ombudsman will begin the “buy-in” process. “Buy-in” refers to the point at which other offices believe that the ombudsman function makes sense, contributes to the organization, and should be sustained.

An important ombudsman task is to educate the offices directly affected by its activities so that suspicion is dispelled and valuable services recognized.

- v. **Developing Stakeholder Partnerships.**
- a. Programmatic “buy-in” doesn’t just happen. Even in advance of providing support to other organizational components the ombudsman can begin to establish beneficial program relationships by initiating and nurturing formal and informal partnerships. For instance, before ombudsman program initiation, the development team should initiate meetings with Partnerships are agreements for the provision of services or support that are beneficial to one or both of the offices. They can be unwritten and de facto commitments of mutual support or more formal written agreements for the provision of very specific types of support or services.

The ombudsman function should establish mutually beneficial program relationships by initiating and nurturing partnerships.

- b. Another pro-active step is to initiate or participate in the establishment of an organization-wide Conflict Management and Dispute Resolution Steering Committee. This committee is made up of members from all sources of conflict management and dispute resolution within the organization. Meetings are held to share information on issues and to exchange best practices. A key product of such a committee is the development of an understanding that no one function (e.g. Ombudsman, EAP, union, HR, etc.) is trying to “do it all.” There is enough “problem resolution pie” to go around. This realization helps to dispel “turf” misunderstandings and can enable positive, productive partnerships.
- vi. **Execution Planning.** Like any large-scale systemic effort, implementing the total program from day one may be difficult and risky. Consideration should be given to running a pilot program or using a phased approach. This allows the program to get its “sea legs” before attempting to operate a fully implemented program serving all targeted customers with a full range of services. A full range of services might be rolled out over a period of several months rather than immediately. How will customers contact the ombudsman? Are the facilities configured to properly and safely receive “walk-in” contacts? What types of records will be kept? Will the ombudsman provide management reports? How will confidentiality be maintained? Will there be formal outreach efforts to inform the contact group/s that the ombudsman is available. Will the office develop an annual report? Are there mechanisms in place to assist ombudsman staff to resolve difficult cases or casework situations? Whatever form the final implementation plan takes, it is important for as many top managers and stakeholders as possible to be allowed to contribute ideas or comments to the ombudsman program implementation

plan. By contributing to the development of the program the organization has a vested interest in its success. The process of partnership building should begin before the office even opens its doors for business.

Whatever form the final implementation plan takes, it is important for as many top managers and stakeholders as possible to contribute ideas or comments to the plan.

- vii. **Program Execution.** Education of the total organization and other business components is vital. The Ombudsman function must be viewed as both non-threatening and capable of adding value to the organization's mission. Based on the research and training conducted earlier, basic policies and procedures are put in place and problem resolution and conflict management services are begun. A progressive ombudsman program recognizes that problem resolution and conflict management services are secondary to the actual prevention of problems and disputes. Trend analysis and tracking of emerging issues enable the ombudsman to take steps in conjunction with other organizational components to defuse potentially troublesome situations early and in some cases to actually prevent difficult and sensitive problems from arising or becoming severe. A careful and measured ombudsman program implementation is more desirable than a rapid one, since modest and consistent success is infinitely superior to the major embarrassment of an overly aggressive program implementation failure.

A careful and measured ombudsman program implementation is more desirable than a rapid one, since modest and consistent success is infinitely superior to the major embarrassment of an overly aggressive program implementation failure.

- viii. **Assessing and Refining the Program.** Any program must include mechanisms for gauging its progress. A valid program assessment process enables the ombudsman to reinforce strong program elements while simultaneously addressing areas in need of improvement. A periodic program assessment and refinement cycle not only provides the obvious benefits of increased effectiveness, but also provides the indirect benefits derived from the perception that the ombudsman improves overall organizational performance and assists in achieving the organization's mission. Some methods of program assessment are:
- a. Customer satisfaction surveys;
 - b. Cost/Benefit analysis; and
 - c. Stakeholder Interviews.

A valid program assessment process enables the ombudsman to reinforce strong program elements while simultaneously addressing areas in need of improvement.

[TOP](#)

CHAPTER 5: PROGRAM OPERATIONS

A. Overview of the Operating Program: The ombudsman program development effort must define specific needs of ombudsman operations. Although the basic building blocks for ombudsman operations are often not the most interesting parts of a program, they are the nuts and bolts that enable the ombudsman staff to carry out the program.

Key categories that must be included in ombudsman program planning include:

Although the basic building blocks for ombudsman operations may not be the most interesting topic, they are the nuts and bolts that enable the ombudsman to carry out the program.

- i. Administrative/Staffing resources;
- ii. Physical/Facilities Requirements; and
- iii. Policies and Procedures.

B. Administrative Resources: These include the following.

- i. Personnel Management Tools:
 - a. Staffing authority/approvals;
 - b. Position descriptions;
 - c. Pay schedule;
 - d. Other benefits;
 - e. Employee evaluation tools;
 - f. Professional development or training plans.
- ii. Fixtures/Furniture/Supplies;
- iii. Office Equipment (copier, shredder, etc.);
- iv. Budget and Accounting Tools; and
- v. Hardware/Software Resources:
 - a. Case tracking database;

- b. Administrative systems;
- c. Telephone system;
- d. Standard software (word processing, graphics, etc.).

B. Ombudsman “Grade” or Salary Level: An essential staffing consideration is salary level or “grade” of the Ombudsman. To enable consistently successful communications (e.g. staff and management will listen) at all levels, and to ensure that conflicts of interest do not arise, the Ombudsman herself/himself should *always* be an executive who is placed outside any existing business office or function, and who reports directly to the organization’s top management. Ombudsman specialists, assistants, deputies, support personnel, etc. can be graded at a level lower than *executive*, but it is essential for the Ombudsman, as program Director, to hold an executive position.

The exact balance of resources and how they are managed will vary across organizations since they are all unique, and since each ombudsman program is tailored to the culture of the specific organization. To ensure effectiveness, the Ombudsman should always be at the executive level.

C. Program Policies/Procedures:

i. Policies:

- a. Ombudsman Charter/Roles and Responsibilities;
- b. Mission, vision and values;
- c. Statement of Values: Neutrality, Confidentiality, and Independence;
- d. Appeals of Decisions;
- e. Customer Service Standards;
- f. Records Creation/Retention; and
- g. Ombudsman Standards of Practice. Standards of practice are absolutely essential to the integrity of the program and its successful long-term operation.

ii. Procedures:

- a. Hours of Operation;
- b. Case Management Procedures;
- c. Office/Staff Security;
- d. Systematic Change; and
- e. Media Inquiries.

The appendix includes some examples of ombudsman program policies and procedures.

D. Physical/Facilities Requirements:

- i. Office Space;
- ii. Secured Doors/Windows and Alarms;
- iii. Utilities/Overhead; and
- iv. Maintenance Agreements/Contracts.

E. Enabling Characteristics: If an emerging ombudsman program has the support of top management, there will be fewer constraints on administrative, policy/procedure, and physical/facility program implementation. New programs should consider a budget strategy depending on how they wish to implement the program and how they envision the growth of the program. It is tempting to acquire space, equipment, systems, etc. if the funding is available. However, a slow program roll out will often be most successful.

The ombudsman function should be implemented slowly and carefully as managers across the organization identify the benefits of the program and buy-in is secured.

The ombudsman function should usually be implemented slowly and carefully as managers across the organization identify the benefits of the program and buy-in is secured.

F. Knowledge, Skills, and Abilities: The individuals selected must have attributes associated with successful ombudsmen. A generic ombudsman position description used in the federal government is included in the appendix.

These attributes include.

- i. Good Listening Skills;
- ii. Established Analytical Ability;
- iii. Concern for Fairness;

- iv. Effective Stress Management Skills;
- v. Knowledge of organizational business lines.

G. Case Intake and Management:

- i. A fundamental and necessary function of the office is to take calls or meet with contacts for the purpose of accepting cases problem resolution. Since an ombudsman is an informal source of assistance, the office DOES NOT accept cases that are engaged in the following formal processes:
 - a. Union action;
 - b. Administrative grievance;
 - c. EEO casework;
 - d. OIG activities;
 - e. MSPB action; or
 - f. Other agency appeals processes.
- ii. In the course of case intake and handling, the ombudsman provides a wide array of neutral and confidential problem resolution and complaint management services that are not offered by traditional service organizations. The ombudsman can:
 - a. Provide information or identify resources confidentially;
 - b. Provide answers to specific questions
 - c. both neutrally and confidentially;
 - d. Serve as an informal channel of inquiry for those who do not wish to pursue formal channels;
 - e. Enable individuals to obtain access to records or management;
 - f. Provide a location where contacts can be heard (conciliation/venting);
 - g. Identify and explore unique options for problem or complaint resolution;
 - h. Offer facilitation/mediation services; and
 - i. Enable contacts to help themselves.

If a contact verbalizes intent or displays behavior that strongly demonstrates or implies that they are a danger to themselves or others, the ombudsman must report this to the

security office, an Office of the Inspector General or another appropriate authority.

H. Reporting Issues and Trends: In the course of communicating and managing casework, the ombudsman will have the opportunity to identify and analyze organizational issues and trends. In reporting issues and trends the ombudsman provides an entirely different set of products and services. It is vital to recognize that the values of neutrality and confidentiality apply just as strictly in providing these services to managers as they do in providing services to single contacts. These services include:

- i. Neutral review and reporting on issues and trends that are specific to organizational business areas;
- ii. Serving as an “early warning system” to alert managers of potential difficulties before they become full-blown problems;
- iii. Providing confidential feedback on operating programs;
- iv. Identifying new or revised operational needs that become apparent through problem resolution and complaint management activities;
- v. Identifying solutions that cut across organizational lines;
- vi. Serving as an information resource and a control center for unfounded and destructive rumors;
- vii. Saving resources through early intervention in potential problems before they escalate into major issues.

The values of neutrality and confidentiality apply just as strictly in providing trend analysis reports to managers as they do in providing services to single contacts.

I. Program Outreach:

- i. If time and budget allow, an ombudsman program will benefit from a carefully planned and managed outreach program. In providing educational or support services to other organizational components or outside groups, it is essential for the ombudsman to avoid creating the impression that the office is “creating problems to solve” or seeking to compete with other offices within the organization. If this impression is given, the ombudsman will lose goodwill and create an adversarial environment. Outreach activities can serve to announce the role of the ombudsman and provide an avenue for individuals and groups to approach the office. It is a public venue in which the ombudsman can communicate the kinds of goods and services it provides and channel individuals and groups to the appropriate source of services within the organization.

If the ombudsman creates the impression during outreach that the ombudsman function is competing with other offices, he/she will lose goodwill and create an adversarial environment.

- ii. Outreach is accomplished by providing printed materials to or verbally communicating with outside parties. The information provided describes the kinds of services the ombudsman provides and the channels that can be used to obtain services. A creative ombudsman office will find that the opportunities for effective outreach are nearly limitless. Some examples are:
 - a. Print and distribute informational letters, brochures, and flyers that describe the office;

- b. Speak at informal events organized by both internal and external organizations;
- c. Assist with panels, round table discussions, and focus groups;
- d. Support task groups and work groups that are created to solve problems;
- e. Serve on formal committees;
- f. Attend ongoing engagements and communicate with other organizational components to either achieve the organizational mission more efficiently or to avoid problems and disputes; and
- g. Create new opportunities for communication and create business partnerships within the organization.

A creative ombudsman office will find that the opportunities for effective outreach are nearly limitless.

CHAPTER 6: MAINTAINING AND REFINING THE PROGRAM

A. Program Change: Organizations are not static. Like any other system, over time the mission, functions, needs, and internal dynamics change. From the beginning, ombudsman program staff should anticipate organizational change and a corresponding evolution of ombudsman functions. As the organization changes, the Ombudsman function needs to evaluate the nature and extent of the changes and adjust in parallel, or at a later point, if appropriate. The program should be structured to allow for this adjustment, and mechanisms should be in place to facilitate change. Partnerships and working relationships, when long-standing and mutually beneficial, enable the ombudsman to assume new functions or new roles. An ombudsman function that is perceived as overly reactionary or interventionist will not have the organizational support needed to expand, assume new roles, or perhaps, to survive in the long term. Since the Ombudsman Program is typically an informal source of assistance, and is successful to the degree that logic and persuasion are used effectively, the most effective mechanisms for change are not unilateral or aggressive, but are positive and supportive. They are institutionalized into the program at an early stage and allow for gradual evolution or adjustment through trust, consensus, partnership, and mutual gain. Measures likely to assist the program evolution include:

Partnerships and working relationships, when long-standing and mutually beneficial, enable the ombudsman to assume new functions or assume new roles.

The most effective vehicles for change are not unilateral or aggressive, they are positive and supportive.

B. Maintaining Management Support. Management support for the Ombudsman Program enhances the ability to assume new roles. Since the ombudsman is an informal source of assistance, top-level management support is important. It provides significant credibility and “license” which enable program change when needed. A reporting line to top management lends credibility and a certain “weight” to the ombudsman’s role, but other methods for building organizational support must be employed for the ombudsman to maintain an effective, long-term program.

Top-level management support provides significant credibility and “license” which enables program change when needed.

C. Organization-Wide Communications Network. When key managers and contacts throughout the organization have effective and satisfying interaction with the ombudsman, they are more likely to support program change and ombudsman activity in new program areas. Key causes of the lack of support from other program areas are: failure to communicate, failure to support other organizational components, and failure to recognize management as a customer. To the degree that the ombudsman builds effective organization-wide communication, ombudsman operations will be smoother, and organizational disputes will be avoided.

When key managers and contacts throughout the organization have effective and satisfying interaction with the Ombudsman, they are more likely to support program change and ombudsman activity in new program areas.

D. Mechanisms for facilitating Program Change.

- i. **Partnerships.** As a facilitator of communication and cooperation, the ombudsman function assists in creating informal and formal partnerships among organizational components. Partnerships which have been successful and beneficial to other organizations create a precedent for smooth and effective relationships with the ombudsman. Concerted efforts to establish the ombudsman as a facilitator of partnership building has positive by-product of encouraging other organizations to “partner” with the ombudsman when new roles or functions are needed.

Partnerships which have proven to be successful and beneficial to other organizations create a precedent for smooth and effective relationships with the ombudsman in the future.

- ii. **“Policy of Least Intervention.”** An ombudsman should attempt to resolve problems or disputes by enlisting the actions of the individual, manager, or organization closest to the problem. In addition, the ombudsman does not necessarily presume to “know the answer to the problem” but rather helps or enables the one closest to the problem to affect the solution. Through this approach the least disruptive and least costly solution is *usually* achieved. Managers or others should only be contacted when this “lowest level” approach is ineffective. In addition, by resolving problems at the level closest to the dispute the potential for perceived threat or intrusion by the ombudsman is minimized, since the ombudsman doesn’t seek the attention of high-level managers and does not presume to “know the business” better than the owner of that office or

function. In fact, the contact or business owner is almost always capable of bringing about successful change. Who is better able than the problem “owner” or business owner to bring about needed change once the problem has been identified? Use of the “policy of least intervention” by the ombudsman will project an image of an “organization-oriented” helper or enabler. This approach decreases perceived threats and over time allows the ombudsman program to evolve and to expand successfully, since managers or other offices do not feel threatened.

By resolving problems at the level closest to the dispute the potential for “perceived threat” or intrusion by the ombudsman is minimized.

- iii. **Consensus Building.** The ombudsmen must establish a reputation as a consensus-builder and facilitator. When this is accomplished, program changes will be viewed as less threatening. A consensus-builder is not likely to be viewed as turf-conscious or threatening. Consensus building should also be used as a day-to-day method for informing and working with other managers to effect systemic change. Before a need for change or new initiatives begin the ombudsman should meet with key managers and discuss what the requirement is, why it arose, why a systemic change is needed, and what the benefits will be for all concerned. This is especially important when change involves a departure from the established ombudsman role or expanding the authority of the ombudsman. All mechanisms for ombudsman program flexibility will be critical when such a change is needed. If other program areas are

threatened change will be difficult. If the ombudsman has been perceived as an “oversight authority” that intervenes in non-ombudsman business areas, there will be resistance to systemic change, especially if it involves an expansion of the role or authority of the ombudsman. The effort to build flexibility into the ombudsman program begins the day the function is established. Effective, non-threatening partnerships and a history of mutually beneficial business relationships are the basis for ombudsman program flexibility.

If other program areas believe they are threatened, change will be difficult.

- iv. **Provision of Valued Services.** The Ombudsman who consistently provides valued services to other offices will have a greater likelihood of enlisting the aid of those offices when the ombudsman function seeks to implement new activities or expand its functions. Very simply, offices that add value and assist other organizations are in turn valued and supported.
- v. **Dispute Avoidance and Problem Resolution:** A mature and successful ombudsman program may reach a point where dispute and problem resolution workloads have been so effectively addressed that it is not necessary to emphasize that role. A parallel to this situation can be found in the legal discipline. In some government organizations the legal workload (e.g. federal administrative law) has fallen to such a degree that some (administrative law judges) believe that fewer judges will be needed,

and that more fruitful careers might be in the practice of Alternative Dispute Resolution.¹ Similarly, when the frequency of disputes and problems falls to a low level, there are those who say that ombudsman staffing can be reduced or that the function is not really needed. In fact, when organizations find themselves in this happy situation, they have the unique opportunity to focus their energies on the much more positive and fruitful pursuit of “dispute prevention.”

- a. Although the resolution of problems and disputes is both a perfectly sensible goal and a positive achievement, a “more sensible” goal (and a greater achievement) is the avoidance of disputes entirely. “Dispute prevention” reduces operational difficulties and dispute related expenditures to a minimum and allows management to focus on: effective planning, program development, operations, and the accomplishment of missions.
- b. To diminish or marginalize an ombudsman program at precisely the point when it can provide the most benefit to an organization simply doesn’t make sense. If the frequency of the problems and disputes declines, the ombudsman should be allowed and encouraged to emphasize facilitation of communications, liaison across internal and external organizations, building partnership, identify opportunities for organizational or programmatic improvement, facilitate of positive change, provide information, neutral fact-finding, and management reporting of organizational trends.

The ombudsman who consistently provides valued services to other offices will have a greater likelihood of enlisting the aid of those offices.

¹ Administrative Law Judge. *Interview at the “ADR and the Legal Profession Conference.”* February 1998.

CHAPTER 7: THE IMPORTANCE OF STANDARDS

A. The Importance of Standards: The identification and implementation of ombudsman program standards appropriate to the organization are essential steps in implementing a strong program and in safeguarding long-term program integrity. The implementation effort associated with any new business function (in any part of an organization) should include the identification of pre-existing standards that should be implemented and a determination as to whether new standards are needed to operate the program consistently and effectively.

Ombudsman program standards not only provide a pre-established legal defense of the program, if needed, but also enable effective and consistent ombudsman operations for day-to-day use.

- i. Ombudsman programs must include the adoption of standards related to confidentiality, neutrality and independence, and typically include standards related to key operating functions such as communications, records management and case handling. First and foremost, standards officially establish the quality operating intent of the program and the conditions under which it operates. In the event of a legal challenge or subpoena, this official statement (of standards) establishes the essential values and constraints of the program so that confidentiality, neutrality and independence can be asserted and defended more effectively in a court of law. Secondly, standards provide benchmarks to all staff members for consistent conduct of the work of the office. Thus, ombudsman program standards not only provide a pre-established legal defense of the program,

if needed, but also enable effective and consistent ombudsman operations for day-to-day use.

- ii. Many ombudsman organizations have implemented program standards. The International Ombudsman Association (IOA) provides an excellent starting point for any organization that is implementing ombudsman program standards, particularly internal programs. While some organizations use the IOA standards verbatim, other organizations may wish to augment them or adjust them to be appropriate for their ombudsman function. Under IOA standards, Ombudsmen do the following:

- a. Provide confidentiality to the fullest extent possible (most applicable in internal/workplace programs);
- b. Assert that there is privilege with respect to communications;
- c. Exercise discretion regarding whether to act upon a concern of someone contacting the office;
- d. May initiate action on a problem he/she perceives directly;
- e. Are designated neutrals and remain independent of the organization;
- f. Operate informally and as an off-the-record resource;
- g. Foster communication about the philosophy and function of the office;
- h. Provide feedback on trends, issues, policies and practices;
- i. Identify systemic issues and provide support for change; and
- j. Keep professionally current by pursuing continuing education and training.

The International Ombudsman Association (IOA) provides an excellent starting point for any organization that is implementing ombudsman program standards.

B. American Bar Association Standards: The American Bar Association (ABA) has also developed ombudsman standards. There are several advantages to using, or

referring to, the ABA Standards: 1) They were developed by a respected organization that is known to many; 2) Ombudsman associations participated in the process; and 3) each type of ombudsman is discussed individually. However, it should be noted that not all provisions included in the ABA standards are endorsed by the IOA or other ombudsman associations. As with any set of standards, review them carefully before adopting them.

The American Bar Association (ABA) has also developed ombudsman standards.

C. Federal Ombudsman Standards: The Coalition of Federal Ombudsmen (CFO), in conjunction with approximately 40 federal agencies, and in coordination with the Interagency ADR Steering Committee, developed standards appropriate for U.S. federal Ombudsmen. Any federal ombudsman function should, at a minimum, review the CFO federal ombudsman standards to determine if they are appropriate for implementation for their office. There are specific legal provisions that apply to federal ombudsmen that do not apply to non-federal ombudsmen that make these standards particularly appropriate for those practitioners. Such legal provisions include: Privacy Act, Freedom of Information Act, Inspector General Act, and others.

Any federal ombudsman function should, at a minimum, review the CFO federal ombudsman standards to determine if they are appropriate for implementation for their office.

Appendix A

**WORKSHOP FOR DEVELOPING AND IMPLEMENTING
AN OMBUDSMAN FUNCTION**

[TOP](#)

Appendix A ¹

WORKSHOP FOR DEVELOPING AND IMPLEMENTING AN OMBUDSMAN FUNCTION

PROGRAM SCHEDULE: DAY ONE

1. Description and Discussion of the Model

2. An Overview of The Ombudsman Function

- a. What is an Ombudsman?
 - i. Classical
 - ii. Organizational
 - 1. Examples of Ombudsman Programs
 - 2. What are the Products/Value Added?
- b. Ombudsman Values
 - i. Independence
 - ii. Neutrality
 - iii. Confidentiality
 - iv. Informal Strategies for Dispute Resolution ...or, Would You Rather be in Court?
- c. Ombudsman Privilege and Records Retention
- d. Services, Functions, Roles
 - i. Active Listening: The Opportunity to be Heard
 - ii. Providing Information
 - iii. Referral
 - iv. Developing Options
 - v. Reality Checks
 - vi. Help to Help themselves
 - vii. Facilitation
 - viii. Shuttle Diplomacy
 - ix. Looking into the Problem: Neutral Fact-finding
 - x. Formal/Informal Mediation
 - xi. Generic Strategies for Problem Solving
 - xii. Systemic Change
 - xiii. Follow Through
 - xiv. Management Reporting
 - 1. Change Agent
 - 2. "Early Warning system"
 - xv. Video: Employee Problems

- e. Issues Not Handled by the Ombudsman
 - i. Issues Related to Formal Appeals Processes
 - ii. Litigation
 - iii. Grievance
 - iv. Adverse Action
 - v. EEO Complaints
 - vi. OIG Audits or Investigations
 - vii. Union Issues
- f. Operations
 - i. Policies and Procedures
 - ii. Alternative Dispute Resolution
 - iii. Case Management Meetings
 - iv. Crisis Casework
 - v. Reporting
 - vi. Outreach
 - vii. Partnerships
 - viii. Case Tracking
 - ix. Physical Environment
 - x. Training
 - xi. Participation in the Ombudsman Community

Activity: Discussion of the role of the Ombudsman

PROGRAM SCHEDULE: DAY TWO

3. Defining an Ombudsman Program Appropriate For The Organization

- a. What is the purpose for Establishing an Ombudsman Function in Your Organization (Statement of the Problem)?

Activity: Why Are You Establishing an Ombudsman Function?

- b. What are the goals?

Activity: Establish the goals

- c. Who are the stakeholders?
 - i. Who is Critical to Your Success?
 - 1. Management
 - 2. Personnel
 - 3. Union
 - 4. Customers
 - ii. What are the existing processes?
 - iii. What is Needed to Secure Stakeholder Buy-in?
 - iv. Are You Going to Meet With Them?
 - v. Educate Them?

Activity: Identify Stakeholders

- d. What are your Products and Services?

Activity: What is the Value for Your Organization?

- e. Ombudsman Program Issues that Must be Addressed:
 - i. Who are the Customers?
 - ii. Mission, Vision, Values
 - iii. Role of the Ombudsman Versus Other Functions
 - iv. Define the Characteristics of the Program:
 - 1. Neutral
 - 2. Confidential
 - 3. Independent
 - 4. Authority
 - 5. Management Support
 - 6. Level of Reporting
 - v. Constraints
 - vi. Sacred Cows (Priorities that cannot be changed)?

Activity: Brainstorming Customers, Mission, Vision, Values

f. Implementing the Ombudsman Function

- i. Top Level Sponsorship
- ii. Developing a Charter
- iii. Schedule
- iv. Action Plan
- v. Personnel
- vi. Employee Development
- vii. Policies and Procedures
- viii. Periodic Reporting
- ix. Space/Environment
- x. Equipment

START SLOWLY!

- *Consider a Phased Implementation*

Activity: What is the Ombudsman Structure That Will Work for Your Organization?

Activity: Develop Action Plan for Implementation

g. Institutionalizing and Maintaining the Program

- i. Maintaining Ombudsman Values
- ii. Providing Useful/Valuable Services
- iii. Partnerships
- iv. External Support: Ombudsman Organizations

Appendix B

A COST BENEFIT ANALYSIS FOR THE OMBUDS OFFICE AT EASTWEST

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Appendix B ¹

A COST BENEFIT ANALYSIS FOR THE OMBUDS OFFICE AT EASTWEST

The Corporate Ombudsman Office

Before going into the cost benefit analysis of the Ombuds office, let me quote the IOA's (International Ombudsman Association's) statement on the cost of an Ombuds office.

“It is important to understand that an Ombudsman program is not a ‘bottom line’ position. An Ombudsman does not exist to make a profit, and the significant value of such a program probably cannot adequately be measured in terms of whether it returns more in savings than it costs to operate the program. Fundamentally, an ombudsman program exists to serve further those principles that cannot satisfactorily be quantified nor subjected to a cost-benefit analysis. An Ombudsman exists to further the ends of justice, to promote a humane system of administration, to provide people with options for hearing concerns and for efficient redress of grievances. Thus even if we assume that the quantifiable benefits of an ombudsman program did not exceed the cost of the program, that would not mean that the program would be valueless or wasteful. It would simply mean that we finally succeeded in identifying the actual cost of the program, that is, the difference between the apparent cost and the quantifiable benefits. It would be necessary to weight the actual cost against the ultimate benefits of the program as a means for pursuit of justice and as forum to give a hearing to the concerns of human beings.”¹

As mentioned above the role of Ombudspersons does not add profit to the corporation (bottom line) the analysis will focus on cost effectiveness. This can be argued using a few serious cases. An award involving wrongful termination or harassment can easily be \$800, 000. Preventing just one such case is enough to pay for the Ombuds office.

Increases in productivity, savings in management time or other expenditures, and the avoidance of litigation and/or other costs, certain justifies the cost of the office.

Increase in Productivity

Industry data have shown that about 10-15 percent of the work force will contact an Ombudsman within a year². If we assume a success rate of 30 percent, that is 30 percent of the complaints are resolved or people feel better after visiting with an Ombudsperson (i.e. a termination is avoided, employee's previous level of productivity is regained, work team morale is greatly improved, or injuries reduced). For Eastwest Corporation that is roughly 325 people. If we use a conservative average cost of \$80,000 per employee (wages, benefits, operating expenses, and overhead), a five percent increase in productivity of 325 employees would result in a benefit of \$1,300,000 to the corporation. This is more than twice the cost of the Ombuds office.

Management Savings

Cost savings' contributions can also be looked at from the point of view of the senior management time savings that would occur if an Ombudsperson would diffuse a serious personnel problem that would have consumed senior managers' time. It is realistic to estimate that managers at all levels would collectively spend 2 to 4 days on a case. This would be about two percent of one senior manager's annual working time. If we assume a full cost of a senior manager's time to be \$200,000, the annual cost savings attributable to the Ombuds office would be \$4,000 per case. If half the cases that an Ombuds office had any impact at all (163 cases) were assumed to be "serious" (requiring senior managers' precious time), the total annual benefits from this source would be \$652,000 or enough savings to cover the cost of the Ombuds office.

Turnover Cost

Staff turnover can be an element of cost to the organization. Termination payments, in accordance with company policy may be involved depending on the situation. There may also be recruitment costs, usually twenty to thirty percent of annual salary depending on the job market situation for the particular professional. There is the cost of bringing such new hires to speed in the organization either through training or orientation. There will be a break-in period before the employee can start producing to capacity. If we assume the total cost to replace a professional employee (recruitment, training, orientation, “break-in”) would be \$25,000 or thirty percent of the average full cost for an employee. If three percent of the 332 exempt employees who contact the Ombuds office annually (or 11 professional employees) were to change their minds about leaving Eastwest, the annual savings to the company from this source would be \$275,000. This is more than half of the cost for the Ombuds office.

Savings in Legal Cost

There are situations when employer and employee disputes could end up in court and where the presence of an Ombudsperson could perhaps deter costly litigation. Whether the case is handled by corporate legal staff or by an outside law firm, the cost could be high depending on the case. This is in addition to the attention lost for the current business. An estimate of \$50,000 per case would not be frivolous. If one adds to this the possible fines, court fees, and damages awarded to the plaintiff, the cost of mishandling an employee related issue could easily be in the \$500,000 to \$1,000,000 range. It would only take one successful resolution by the Ombuds office in such a case every few years to justify the existence of the Ombudspersons at Eastwest.

There are a few other sources of savings and benefits that the Ombuds office can bring. These savings would include reduced theft, safety violations, sabotage, vandalism or bodily harm to other employees. Under the Federal Sentencing Guidelines, the Ombuds office has a mitigating effect on any potential fines levied on the corporation in the case of a punishable violation. The feedback that the Ombuds office gives to senior management will lead to policy and/or procedural changes. This could generate a positive impact on productivity and morale. Although it is difficult to put a dollar value on this kind of contribution it is nonetheless a cost benefit.

The above savings are somewhat additive. The institution of Ombuds office appears to be a cost effective measure. Table I summarizes the savings in the various categories above. These potential savings estimates are very conservative. The assumption is that less than one percent of the work force at Eastwest would have serious cases resolved between them and the corporation or fellow employees, by using the Ombuds office. The success rates in other companies are much higher than that. But even with such conservative estimates the estimated cost savings of \$3,277,000 are over seven times the cost of operating the Ombuds office estimated at \$461,000. Other companies report cost savings ratios of 1:6 to 1:10

Table I**SAVINGS THROUGH THE OMBUDS OFFICE.**

The cost benefit argument for having the Ombuds office is two fold. For only \$461,000 Eastwest will be able to provide a confidential, neutral and independent option for dispute resolution for the entire work force. When the potential savings resulting from the Ombuds institution of \$2,816,000 (a highly conservative estimate), the Ombuds office will pay for itself many times over within a short period.

Category	Potential Cost Savings	Comment
Increase in Productivity	1,300,000	With a 5% increase in productivity.
Sr. Management time savings	652,000	180 cases a year
Turnover Cost savings	275,000	By preventing 11 employees from leaving
Legal cost savings **	50,000	Legal dept./outside firm time
Litigation prevention	1,000,000	Fines, court fees, and damages
Total	3,277,000	
Cost of Ombuds Office per year	-461,000	per 1996/97 budgets
Cost Savings	\$2,816,000	

**legal expenses incurred whether a case ends up in court or not.

REFERENCES

1. The Ombudsman Association handbook, 1995
2. Mary P. Rowe, "The Corporate Ombudsman: An Overview and Analysis." Negotiation Journal, April, 1987.
3. Mary P. Rowe et al, "Cases, methods, costs and impact of some corporate Ombudsperson." TOA Survey, 1992.

Appendix C

SAMPLE PARTNERSHIP AGREEMENT FROM THE U.S. DEPARTMENT OF THE ARMY

[TOP](#)

Appendix C

SAMPLE PARTNERSHIP AGREEMENT FROM THE U.S. DEPARTMENT OF THE ARMY

Partnership Agreement

We, the undersigned, commit our organizations to a partnership of mutual support in attaining our vision:

A Project Team Working In Partnership To Provide Timely, Accurate And Personal
Services In Support Of The Organization's and Customer's Mission.

In support of this vision we pledge to:

1. Provide continuous feedback and information to each other. Our goal is to keep one another informed and “in the loop” especially when we have significant contact with our managers, supervisors and employees.
2. Be proactive in providing each other with the most recent and current information, particularly when it is a significant change to past practice or if it impacts large segments of our customers. Our goal is to ensure that we continue to maintain a keen awareness of key issues, topics and requirements and that we share this information in order to resolve problems and improve our service to customers.
3. Actively seek each other's opinion on topics of mutual interest, particularly on matters that might have high visibility or the potential for controversy. Our goal is to provide the customer with a unified approach to common problems and issues and to actively involve one another in the decision-making process.
4. Coordinate with each other prior to making commitments for one another. Our goal is to ensure a mutual respect for each other's workload and obligations.
5. Create and foster attitudes that reinforce our partnership so that the quality, accuracy and timelines of our services are strengthened by our unity. Our goal is to do everything we can to ensure solidarity.

6. Live up to our commitments, and if we cannot fulfill and provide reliable information and service to our customers and each other, work together to resolve obstacles.

**We Must Never Lose Sight Of Who Our Real Customers Are
They are: ... Remember, Our goal is to make our vision statement a reality.**

Appendix D

Ombudsman Policies and Procedures: Sample Documents

[TOP](#)

Appendix D, Part 1

OFFICE OF THE OMBUDSMAN PROCEDURES AND GUIDELINES MANUAL

SECTION: 1.1. Roles and Responsibilities
CHARTER: Establishment of the Office of the Ombudsman
Approved: _____ Date: _____

1. **Purpose.** To establish the Office of the Ombudsman.

2. **Scope.** Washington OO only.

3. **Background.**

The Office of the Ombudsman was established pursuant to (reference statutory basis or source of management mandate)

4. **Responsibilities**

The responsibilities of the office of the Ombudsman are set forth in the attached Mission Statement and Strategic Goals.

The Office of the Ombudsman is committed to preserve confidentiality and impartiality in its dealings with all its customers.

5. **Procedures.**

The operating philosophy of the Office of the Ombudsman is set forth in the attached Vision, Mission and Value statements.

6. **Contact:**

If there are questions or comments associated with this document contact: (Insert the name of the ombudsman or ombudsman staff member).

MISSION STATEMENT

The Office of the Ombudsman was created to:

(The mission statement of the office should appear here.)

FUNCTIONAL STATEMENTS

The Office of the Ombudsman

- Serves as a confidential, designated neutral for customers to raise concerns and request assistance to informally resolve conflicts and problems.
- Develops, implements, evaluates and improves an independent, neutral, problem resolution service for: (employees, customers, the general public, etc.)
- Serves as a change agent for the Corporation by identifying systemic problems in agency policies, procedures, or regulations and submitting recommendations for change.
- Promotes an effective conflict management program throughout THE ORGANIZATION to facilitate effective and efficient operations.
- Promotes the availability of the Ombudsman Office to external and internal customers.

The Office of the Ombudsman has the following primary functions:

- Communications Facilitation: This includes...
- Problem Prevention: This is accomplished through...
- Dispute Resolution: When disputes arise, the Office of the Ombudsman...

Functional Description

The major functions include:

- Tracks inquiries, complaints and disputes to determine patterns and systemic issues that may need to be modified.
- Works to explore possible changes in policy, procedures, or processes in response to trend analysis results.
- Analyzes policies, operating programs and procedures to determine if existing or proposed programs accomplish organizational goals and objectives.
- Evaluates and develops management reporting and other administrative systems and programs to identify systemic risk and track information flow.
- Monitors the Ombudsman activities nationwide to ensure program compliance and progress toward achievement of stated goals and objectives.
- Educates employees about the services of the Ombudsman.
- Publicizes and develops proactive strategies to market ombudsman services to the public, financial community and trade and association groups.
- Holds presentations, briefings, training sessions, and conferences for all customers to provide information about ombudsman programs and to discuss relevant and significant issues.

Field Operations

The Ombudsman functions in each location are:

VISION STATEMENT

The office shall be recognized as leader in...

VALUE STATEMENT

The Office of the Ombudsman is committed to confidentiality, neutrality, organizational independence, and operational excellence.

STRATEGIC GOALS

The Office of the Ombudsman will take a leadership role to:

- ◆ **Provide accessible, consistent and responsive service to all ombudsman contacts.**

Performance Measurements:

- Program Compliance Reviews
- Customer Surveys
- Focus Groups and other feedback mechanisms
- Customer service standards relating to the treatment and fairness of customers
- Consistent customer treatment in conformance with established service standards
- Continual evaluation of contact feedback and willingness to adjust operations to achieve improved performance and satisfaction

- ◆ **Ensure independence and neutrality of the Office of the Ombudsman, preserve confidentiality and prevent retribution in the complaint process.**

Performance Measurements:

- Confidential feedback surveys addressing confidentiality and retribution.

- ◆ **Model and facilitate effective conflict management practices and processes, as appropriate throughout the ORGANIZATION.**

Performance Measurements:

- Corporate conflict management training and education
- Increased awareness of and use of alternative dispute resolution tools where appropriate
- Decrease cost and time of dispute resolution

- ◆ **Develop and foster effective working partnerships throughout the Corporation.**

Performance Measurements:

- Response from other program areas within established customer service standards
- Other members of the organization volunteer information and cooperate in problem resolution
- Two-way feedback from regularly scheduled inter-office working groups
- Performance feedback from management reports regarding the efficiency of operations

◆ **Market and promote the Ombudsman program.**

Performance Measurements:

- Corporate awareness training and education
- Random calls to program offices to review staff knowledge of Ombudsman program
- Customer surveys and other participatory feedback mechanisms
- Number of policy analysis requests from program areas

◆ **Address systemic issues affecting the organization and develop recommendations to influence change.**

Performance Measurements:

- Ombudsman reports that detect patterns and trends
- Feedback from customers
- Program Compliance Reviews

Appendix D, Part 2

CASE HANDLING/MANAGEMENT PROCEDURES

1. Case Handling Procedures place the Ombudsman's mission, vision, and values within a framework of processing and resolving inquiries, problems, and complaints.
2. Ombudsman casework is the fundamental reason the ombudsman exists.
3. The procedures are standard and apply to the entire organization at all locations.
4. What do the procedures consist of? There are 6 fundamental components.
 - Client Types;
 - Avenues of Contact;
 - General Resolution Strategies;
 - Case Types;
 - Standards for Response; and
 - Avenues of Resolution.
5. Client Types. What are the types of clients? There are 3 client types:
 - Employees;
 - The Public;
 - Other Companies/Organizations;
 - Etc.
6. Avenues of Client Contact. What are the avenues by which clients contact the ombudsman? There are 3 avenues:
 - Telephone;
 - Written (this includes electronic contacts that in turn include Internet); and;
 - Walk-in.

7. Case Processing Strategies. There are broad cases processing strategies to employ, which lead to case resolution. They are:

- Express the ombudsman values:
 - Independence, neutrality, confidentiality;
- Determine facts:
 - Name;
 - Phone #;
 - Organization (Public/Private);
 - Ask client, “Have you spoken to other personnel/offices?”;
 - Record other relevant information (if needed).
- Seek permission to discuss case with other individuals or organizations;
 - Express the goal to identify alternatives and facilitate resolution; not to actively solve problems directly;
 - Determine what the client hopes to accomplish by calling/contacting the ombudsman;
 - Identify an avenue of resolution (discussed later);
 - Perform research, if needed;
 - Seek resolution, if possible; and
 - Execute final case disposition; call or write client to discuss action/inaction/resolution of case.

8. Case Types. There are four case types. The four types are:

- General Assistance;
- Inquiries
- Problem Resolution; and
- Complaints.

9. There are several types of contacts, which must be referred. These contacts are:
- Matters in Litigation;
 - Matters being appealed to formal bodies;
 - Matters being grieved – if there are formal grievance procedures;
 - Crimes; and
 - EEO Complaints – in the case of Federal agencies.
10. Case Handling Standards. There are both general and specific standards for case handling. These standards are:
- Ombudsmen are always polite;
 - Ombudsman personnel are always responsive (actively pursue case resolution, follow up with clients);
 - Information is always confidential;
 - Phones will be manned during accepted business hours;
 - Following client contact by phone (voice mail), personnel will acknowledge that contact by phone within 24 hours;
 - Following client contact by letter, personnel will acknowledge that contact by phone within 5 business days.;
 - Ombudsmen personnel will strive to resolve cases within 10 business days;
 - If cases are not resolved in 10 days, the contact will be called to apprise them of the progress achieved.
 - If the contact was by phone originally, this update of progress will be by phone.
 - If the contact was written (including E-mail) originally, the update will be by letter (never by E-mail);
 - Following the 10 day update on progress made the contact must be apprized of progress made periodically at the discretion of the Ombudsman analyst.

11. Avenues of Case Resolution. There are several avenues of case resolution. They relate to the complexity of the case. These avenues are:
 - General Assistance (Quick Answer);
 - Research;
 - Referral (often follows light research); and
 - Conflict Management. Conflict Management is defined as: “Process for managing client differences to develop cooperation and resolve problems.”¹
12. Working with Contact Groups. Individuals from all contact groups should be handled in the same confidential, responsive manner discussed above. What varies are the types of inquiries received.
13. Customer Satisfaction Surveys.

Reviewing and Improving Case Handling/Management

1. After case resolution, what happens next? Systematically review ombudsman case handling effectiveness and improve it. This approach is known as business process improvement and is usually carried out by a representative group of ombudsman personnel or another objective reviewer.
2. Inherent in the operations of any well-managed service organization is the assumption that there will be methods of self-evaluation. Why do we do self-evaluation? Quite simply, the ombudsman should know “how the office is doing” so that the office can constantly seek to improve its business processes (processes consist of everything that the office does in achieving its functions).
 - Do we meet standards?
 - Are customers satisfied (not with outcome of case; but rather with services)?
 - Is management reporting informative and timely?
 - Are our administrative functions efficient?

¹ This definition was provided by Thomas Dunne, former Director of the IRS Center for Conflict Management. The term “process” as used in the definition includes facilitation, conciliation, informal mediation, neutral fact-finding, and shuttle diplomacy.

3. Thus, process improvement, when managed properly, seeks to monitor all major processes (and some minor ones too), measure them (quantifiable statistics regarding effectiveness), generate recommendations for improvement, and implement appropriate recommendations.

4. The carefully managed program does not stop monitoring processes after they are examined once. Characteristics of process improvement include:

- A continual process. It does not stop when an area has been examined once;
- It is quantifiable;
- Everyone participates;
- It includes delegating authority/empowerment; and
- Does not include retribution for “bad” ideas, or mistakes.

5. In addition, customer satisfaction surveys measure several aspects of how an ombudsman office performs. It answers the question: “How are we doing?”

Case Closure

Following case resolution, the case is designated as “closed.” A case is defined as closed when one or more of the following are true:

- a. No further actions are required to satisfy the client’s request;
- b. The request is referred to an appropriate organization outside of the office of the ombudsman for resolution; or
- c. No additional options are available. (This includes situations in which ombudsmen cannot become involved such as litigation, formal appeals or grievances, EEO complaints, or other formal processes.)

Final Disposition Letters

Final disposition letters are sent when no further services are possible, or needed, given the specific conditions associated with a case. They are sent to apprise a contact that there is nothing further that can be done to assist them, although in some instances the client may not agree. The letter must state the reasons why there is nothing left to do, and that the ombudsman will take any new information into consideration that the client can provide, if it appears that it could affect the determination of the case.

Ombuds Case Sheet

Ombuds (name): _____ Date: (yr-mo-da): _____

Agency: _____

Department

Problem as reported by contact (narrative):

Problem as identified by Office of the Ombudsman (narrative):

Amount of time spent (# of hours): _____

a. telephone (yr-mo-da)

b. research (yr-mo-da)

c. personal visits (yr-mo-da)

Resolution (narrative):

Date closed (yr-mo-da): _____

Operations improvements (narrative):

Customer Survey

(to be asked at the close of each case, with the consent of the customer)

“We want to evaluate the effectiveness of our pilot ombudsman program. Your feedback in this regard is important to us. Therefore, would you consider one of the following:

- a. Answering a few questions for me now?
- b. Allowing another ombuds to call and ask a few questions?
- a. Allowing me to send you a survey to complete and return anonymously?

Your comments will not be associated with you in any way and are solely intended to provide us with information to determine the effectiveness of this program”

1. Would you use the Ombuds again? In what specific instances?

2. Do you understand why the end result was the proper result?

3. Was your issue handled in a neutral, non-threatening manner?

4. Did this program offer you an avenue for problem solving that was not previously available?

5. Do you have any other comments that will help us evaluate the program?

Appendix D, Part 3**OFFICE OF THE OMBUDSMAN
PROCEDURES AND GUIDELINES MANUAL**

SECTION: 3.9 Operations	
CHAPTER: Office of the Ombudsman Security (Internal Program)	
Approved:	Date:

1. **Purpose.** The purpose of this chapter is to identify and implement policies and procedures for Office of the Ombudsman casework security and physical security.
2. **Scope.** These procedures will be applicable to...
3. **Background.** The office periodically handles casework that involves handling angry, emotional or physically aggressive contacts. The office must safely manage these situations, termed crisis casework, to avoid physical harm, stress and anxiety. In addition, the cases must be referred to the appropriate organizational resource or outside authority, since they go beyond the mission, function and expertise of the office. Sections A of this procedure provide office staff with procedures and guidelines for crisis casework management.

Physical security is important to business because it ensures the safety of the office. In the event of a fire, medical emergency, etc., each staff member should know the steps that must be taken. Section B specifies physical security procedures and guidelines for the office.

4. **Definitions.** For the purpose of these procedures, the following definitions apply:
 - a. **Crisis Casework:** Casework that demands skills beyond the communication and case resolution abilities commonly practiced by ombudsmen. These cases include crucial emotional or physical situations, which arise unexpectedly during the course of case resolution and that may be threatening or dangerous to people or property.
 - b. **Physical Security:** Protection of personnel, facilities, and all material against unauthorized entry, trespass, damage, or other illegal or criminal acts in a workplace environment.

- b. Workplace Aggression: A range of behaviors which are generally unacceptable have a verbal and/or physical component of abuse, and have a negative effect on workers, the organization, and other individuals.
 - d. Workplace Safety: The provision of a safe and sound environment that allows employees to work without life threatening circumstances.
 - e. Emergency Preparedness: The ability to respond properly in emergency situations to minimize employee injury and property damage.
 - f. Reckless Endangerment: Subjecting individuals to danger by engaging in conduct that creates substantial risk of serious physical injury.
5. **Policy.** Management is committed to the safety of office staff, other employees, and the public and will take every practical step to ensure safety in the workplace.
6. **Procedures.** Casework and physical security procedures and guidelines are presented in Sections A and B.

A. Casework Security.

- (1) Telephone Inquiries. Ombudsman staff should use conciliation, facilitation and mediation skills to the extent needed to focus contacts on their case issues and to avoid verbal or physical acting out.
- Staff members should courteously but firmly terminate telephone conversations in which a contact refuses to cease abusive behavior.
- Staff members should, to the best of their ability, attempt to determine the facts related to the threats against the organization/company or property so they can be reported to the Security Section or the police, as appropriate.
- More detailed guidelines for handling emergency telephone calls can be found in attachment I. All staff must keep the Emergency Telephone Call Checklist near the phone.
- Following conversations that are verbally abusive or threatening, ombudsman staff should confer with ombudsman managers to determine what steps should be taken, if any. These steps may include discussing the case in Case Management Meetings or referring the case to the Security Section.

- If an emergency situation occurs that imminently threatens or impacts the safety of people or property, ombudsman staff should immediately call the Security Section. (Attachment I.).
- (2) Meetings. Ombudsman staff should take precautions to ensure safety when meeting with contacts.
- When meeting with contacts who may be upset or agitated, staff should use meeting rooms with 2 doors when possible. Rooms which are in a central location are preferable, since other staffs are often nearby.
- Contacts should be met at the door and escorted to the meeting room. Under no circumstances should a contact be admitted without identifying who they are and with whom they are meeting.
- Whenever a meeting with an angry or emotional contact is to take place, staff should alert other staff that they are having the meeting and arrange for an OO staff member to check on the meeting at a prearranged time.
- When meeting with contacts who may be upset or agitated, staff should carry a remote duress transmitter alarm to ensure that security can be alerted quickly if needed.
- Following a meeting in which a contact becomes very emotional or agitated, or physically acts out, ombudsman staff should immediately confer with managers to determine what steps should be taken. These steps may include discussing the case in Case Management Meetings or referring the case to the Security Section.
- More detailed guidelines for conducting safe meetings can be found in Attachment I (see Planning Meetings with Agitated or Unpredictable Contacts).

B. Physical Security.

- (1) Prevention of Workplace Theft. Ombudsman staff should take precautions against theft. The organization is not responsible for lost or stolen items.
- Staff should lock-up and adequately secure all personal and office valuables. This would include securing laptop computers and personnel files.

- Staff should secure portable electronic equipment at the close of the business day and whenever they are absent from the work area for extended periods.
 - Staff should immediately report suspicious activity to OO managers. These activities should also be reported immediately to the nearest guard and to the Security Section at (XXX) XXX-XXXX.
- (2) Prevention of Workplace Aggression. Ombudsman staff should adhere to work practices that are designed to make the workplace safer. (See company policies).
- The company has implemented a zero tolerance policy for workplace aggression. Within the Office of the Ombudsman the appearance of verbal or physical aggression should be avoided.
 - Ombudsman staff planning to work after hours should notify the Security Section in advance. This will ensure optimal employee safety during non-typical work hours.
- (3) Fire Safety. Staff should know how to exit the building quickly in case of a fire. This requires staff to conduct emergency preparedness exercises.
- If a staff member suspects that a fire has been started (evidence of flame, smoke, etc.) the nearest alarm should be activated and a manager alerted when it is practical to do so. When all staff are safe, the situation should be carefully assessed and appropriate action taken (e.g. inform building manager, security, etc.)
 - Staff should be familiar with where proper exits exist and fire fighting equipment are located. (See paragraph 6.B.5) Also, a manager or Floor Warden should be designated to ensure that everyone is out of the office in the event of fire. This advance planning could prevent fire deaths and injuries in the workplace.
 - When a fire is suspected or confirmed evacuation procedures should be implemented immediately. (See paragraph 6.B.3).
 - Where needed, special procedures for helping physically impaired employees should be implemented.
 - Office exits must not be blocked or locked to prevent emergency use when employees are within the building. In the event of fire, staff should leave the building through the main entrance and

descend to the street level using the stairs in the elevator lobby.
Leave the building through the back door and assemble across the street

- (4) Workplace Bomb Threats. Ombudsman staff should be familiar with established policy and guidance regarding the handling of bomb threats. Suspicious packages should be left alone and reported to Security.
- (5) OO Physical Security Resources:
 - First Aid Kit: A first aid kit is located...
 - Fire Extinguishers: There are fire extinguishers accessible to the office
 - Fire Alarms: Two fire alarms are strategically located just outside OO's front entrance next to the stairs used for exiting during an emergency. Also located in that same area is an emergency phone that dials the fire department directly. It should be used if a fire occurs.
 - Security Guard: In case of an emergency, the nearest security guard is located on ...
 - If a staff member becomes aware of physical safety risks they should confer with OO managers to determine what the appropriate actions will be.

7. **Contacts.** If there are questions or comments regarding these procedures or the information provided, please call _____ on (XXX) XXX-XXXX..

ATTACHMENT I

OO EMERGENCY PHONE CALL CHECKLIST

During the Call:

STAY CALM

-Breathe deeply.

KEEP THE CALLER ON THE LINE.

SPEAK SLOWLY IN A LOW VOICE.

BE SYMPATHETIC AND HELPFUL.

GET INFORMATION.

- Name;
- Location;
- Phone number;
- Accent or background sounds;
- Caller behavior, attitude; and
- Caller issues.

USE EMERGENCY E-MAIL BOX DURING CALL.

- E-mail address = q

After the Call:

CONSULT WITH MANAGERS IMMEDIATELY

OBTAIN SUPPORT FROM SECURITY, COUNSELORS OR
POLICE

Planning Meetings with Agitated or Unpredictable Contacts

1. **Plan** ahead:
 - Alert other that you are meeting;
 - Have a buddy with your, or have someone check in with you.;
 - Meet in a safe and neutral setting.
 - Maintain distance; and
 - Have a way to get out.
2. **Control** the meeting;
 - Remain calm;
 - Breathe deeply;
 - Speak with authority in a slow, low voice;
 - Get information (see above, under Phone calls)
 - Inform the contact that to achieve results cooperation is a must.
 - Stop the meeting at the first sign of physical aggression (no heroes); and
 - Get out of the room.
3. **Consult** with managers/team leaders.
4. **Obtain** support from Security, police and counselors.
 - Important phone numbers attached.

EMERGENCY PHONE NUMBERS

SECURITY:

(9) 911 for local police or fire emergencies

Other numbers:

Security Services:

Office

Sky Pager

PIN#

Physical Security

Office

Sky Pager

PIN#

Guards:

Captain 202-8898-3557

Captain 703-516-5316

EMPLOYEE ASSISTANCE PROGRAM:

Call the EAP in emergencies – 1-800-XXX-XXXX

GUARD POST PHONE NUMBERS

Guidelines for Dealing with an Agitated Employee

1. De-escalation (calming down) is unnatural when someone is agitated. Expect more agitation than less.
2. Try to calm yourself first before approaching the employee, and to remain calm. Talk to the employee in a firm, monotone, low-pitched voice.
3. Focus on the process, that is, what is actually happening at that moment, (I'm so upset I just want to scream and throw things) not on the content (I hate my job).
4. Stay at the same physical level as the employee. If he/she is sitting, then sit; if he/she is standing, stand.
5. Stay at the same physical level as the employee. If he/she is sitting, then sit; if he/she is standing, stand.
6. Stand or sit at more than on arm's length away.
7. Break eye contact; staring directly at the person can be threatening.
8. If you have loose clothing on that can be pulled remove it before meeting with the employee. This includes long necklaces or other jewelry, scarves, ties.
9. Remove objects from the room that could be used as weapons: staplers, scissors, etc.
10. Stand at an angle to the person, not directly face-to-face. This may help you from being pushed over by the other person.
11. Use the person's name. Let him/her use your name.
12. Don't touch the person.
13. Don't argue. Be firm, calm, and controlled. Be authoritative, not authoritarian.
14. Answer the employee's concrete questions while calming him/her (Why do I have to do this new paperwork?); ignore their rhetorical ones (Why is life so hard for me?).
15. Suggest alternative behaviors to cope with the pressure, the job, the specific situation which has caused the agitation.
16. After the incident take time to discuss with someone what has happened. Let the rest of your staff who witnessed the incident take time to process it also. EARs Management line is a good place to assess an incident (1-800-608-7515).

Agitated Person

The agitated person:

1. perceives that he or she has been humiliated,
2. displaces anger toward an object, person, or place that is not involved in the situation,
3. uses denial to avoid being objective about his or her situation,
4. needs to have someone intervene to facilitate a positive outcome

When you talk to someone who is agitated:

1. use sentences of seven words or less,
2. use words of three syllables or less,
3. focus on behavior and articulate that it is not okay to act out,
4. don't show emotion, or you will escalate the agitation,
5. show the behavior that you want to be modeled,
6. control gestures and movement or the person will become further agitated,
7. focus on the person but don't take notes in front of the person. Wait until the person leaves your office to write your notes.

Fearful Person

When you talk to a contact who appears fearful or who suggests that he or she is trapped:

1. remain relaxed (gestures and movements can add stress),
2. act controlled and confident,
3. maintain a low, calm voice,
4. maintain eye contact,
5. show the promise of help through your body language

Frustrated Person

When you talk to a contact who appears frustrated:

1. maintain control of the interview,
2. model controlled behavior
3. control impulses,
4. keep hands relaxed and out with palms down,
5. maintain a soft, quiet, firm tone of voice so that the person has to concentrate to hear you.

Intimidating Behavior

When you talk to someone who intimidates:

1. do not model the intimidating behavior,

2. don't act fearfully,
3. be clear about the consequences of intimidating behavior,
4. don't let the contact think the intimidating behavior is working,
5. use eye contact sparingly because the intimidator sees eye contact as a challenge,
6. use eye contact when you make a statement and then back off,
7. avoid a fight and allow a flight, i.e., allow him or her to leave the office to cool off, if necessary,
8. remember that you will never control an intimidator,
9. if necessary to bring a coworker, bring in someone of the opposite sex to you.

Acting Out

Seldom is the case that an angry person will act out.

A person who acts out tends to have:

1. a limited support system,
2. few social skills,
3. emotional difficulties.

The more elaborate the plan, the more likely the behavior.
Look for a serious intent; look for a means.

Appendix E
POSITION DESCRIPTION

[TOP](#)

Appendix E

POSITION DESCRIPTION
Management and Program Analyst
GS-0343-14
Ombudsman Specialist
Office of the Ombudsman

COPY

INTRODUCTION

This position is located in the U.S. Department of Education, Federal Student Aid (FSA), and Office of the Ombudsman. The incumbent will manage customer complaint cases by receiving, reviewing and attempting to resolve complaints from student loan borrowers. In addition, the incumbent analyzes student loan borrower data and provides management with recommendations for improvements to FSA programs. The incumbent will have frequent contact with student loan borrowers and other agencies by conducting outreach, responding to complaints, managing the Ombudsman web site, and informing the public about the Ombudsman's services.

I. MAJOR DUTIES AND RESPONSIBILITIES

As an Ombudsman Specialist, directs and develops plans for project teams or other groups in accomplishing/producing projects/studies.

Analyzes and evaluates on a quantitative/qualitative basis the effectiveness of line program operations in meeting established goals and objectives.

Evaluates and advises on organization, methods, and procedures.

Analyzes management information requirements.

Develops, analyzes, and evaluates new or modified program/management policies, regulations, goals, or objectives.

Develops procedures and systems for assessing the effectiveness of programs/management processes.

II. FACTORS

Factor 1 - Knowledge Required

FL 1-8 1550 POINTS

Knowledge at a level to serve as an expert in the application of a wide range of qualitative and/or quantitative methods for the assessment and improvement of program effectiveness or the improvement of complex management processes and systems.

Knowledge of a comprehensive range of administrative laws, policies, regulations, and precedents applicable to the administration of one or more important public programs.

Knowledge of POC program goals and objectives, the sequence and timing of key program events and milestones, and methods of evaluating the worth of program accomplishments.

Knowledge of relationships with other programs and key administrative support functions within the employing POC or other agencies.

Skill to plan, organize, and direct team study work and to negotiate effectively with management to accept and implement recommendations, where the proposals involve substantial POC resources, require extensive changes in established procedures, or may be in conflict with the desires of the activity studied.

Factor 2 - Supervisory Controls

FL 2-5 650 POINTS

The employee is subject only to administrative and policy direction concerning overall project priorities and objectives. The employee is typically delegated complete responsibility and authority to plan, schedule, and carry out major projects concerned with the analysis and evaluation of programs and organizational effectiveness. Analyses, evaluations, and recommendations developed by the employee are normally reviewed by management officials only for potential influence on broad agency policy objectives and program goals.

Factor 3 - Guidelines

FL 3-5 650 POINTS

Guidelines consist of basic administrative policy statements concerning the issue or problem being studied. The employee uses judgment and discretion in interpreting and revising existing policy/regulatory guidance for use by others. Some employees review proposed regulations which would significantly change the basic character of POC programs, the way the POC conducts its business with the public or with the private sector. Develops study formats for use by others on a project team or at subordinate echelons in the organization.

Factor 4 - Complexity

FL 4-5 325 POINTS

The work consists of projects and studies which require analysis of interrelated issues of effectiveness, efficiency, and productivity of substantive mission-oriented programs. Decisions about how to proceed in planning, organizing and conducting studies are

complicated by conflicting program goals and objectives. Options, recommendations, and conclusions developed by the employee take into account and give appropriate weight to uncertainties about the data and other variables which affect long-range program performance.

Factor 5 - Scope and Effect

FL 5-5 325 POINTS

The purpose of the work is to analyze and evaluate major management/program aspects of substantive, mission-oriented programs. The work involves identifying and developing ways to resolve problems or cope with issues which directly affect the accomplishment of principal program goals and objectives. Work products are complete decision packages and staff studies, and typically contain findings/recommendations of major significance which serve as the basis for new administrative systems, legislation, regulations, or programs

Factor 6 - Personal Contacts
and

Factor 7 - Purpose of Contacts

Levels 3 and c = 180 POINTS

Contacts are with persons outside the POC and with high level program officials in a moderately structured setting. The purpose of contacts is to influence managers or other officials to accept and implement findings and recommendations on organizational improvement or program effectiveness. The employee may encounter resistance due to organizational conflict, competing objectives, or resource problems..

Factor 8 - Physical Demands

FL 8-1 5 POINTS

Work is sedentary with occasional travel.

Factor 9 - Work Environment

FL 9-1 5 POINTS

Work is typically performed in an office setting.

Total Points = 3690

III. UNIQUE POSITION REQUIREMENTS

Strong knowledge of all SFA programs and operations to perform program and process analyses.

Knowledge of FSA systems (i.e., NSLDS, PEPS, etc.) to access and understand data for complaint resolution.

Strong understanding of FSA partnerships with the financial aid community.

Working knowledge of the Department of Education programs (i.e. Direct Loan, Pell Grant, etc.)

Ability to maintain confidentiality and neutrality.

Strong analytical and problem-resolution skills used to recommend options for solving student loan borrower complaint cases.

Understanding of the government structure and processes.

Strong oral and written communication skills and interpersonal skills to operate in a one-on-one environment.

Skills to conduct statistical and trend analyses as well as to develop recommendations for improvements to FSA programs.

APPENDIX F

Ombudsman Guidelines and Standards

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Appendix F



COALITION OF FEDERAL OMBUDSMEN

GUIDELINES AND STANDARDS

Standards

["A Guide for Federal Employee Ombuds: A Supplement to and Annotation of the Standards for the Establishment and Operations of Ombuds Offices Issued by the American Bar Association".](#)

This Guide, developed by the Coalition of Federal Ombudsmen (CFO) and the Federal Interagency Alternative Dispute Resolution Working Group (IADRWG) Steering Committee, builds upon the [Standards For The Establishment And Operation Of Ombuds Offices](#) issued February 2004 by the American Bar Association (ABA) and is intended only for use by federal employee Ombuds in connection with their functions for the federal government.

These standards apply to all Federal Ombudsman programs.

Administrative Dispute Resolution Act of 1996 (ADRA)

The [Administrative Dispute Resolution Act \(ADRA\) of 1996](#) defines "alternative means of dispute resolution" to mean any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, factfinding, minitrials, arbitration, and use of **ombuds**, or any combination thereof. ADRA contains specific provisions for Confidentiality that apply to all Federal Ombudsman.

Federal Acquisition Regulations Ombudsman (FAR)

[Federal Acquisition Regulation \(FAR\), Section 16.505, Ordering](#) requires that the head of the agency shall designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

NASA's provides an example of how to implement their FAR Ombudsman program in [Subpart 1815.70--Ombudsman](#) of their procurement procedures. They require that all synopses announcing competitive acquisitions and each contract and task order contain substantially the same clause found at [Subpart 1852.215-84](#).

Records

All Federal Programs, even a Federal Ombudsman Program, creates records needed to document activities for which they are responsible and demonstrate the effectiveness of

the program. The [*National Archives and Records Administration's \(NARA\), General Records Schedule 1, Civilian Personnel Records, Section 27, Alternative Dispute Resolution \(ADR\) Files*](#) contain general guidance on ARD record retention.

Ombudsman should consult with their agency records officer and Legal Counsel when developing their record retention policy and ensure any records retention procedures do not conflict with Ombudsman confidentiality requirements.

Appendix G
A Guide for Federal Employee Ombuds

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Appendix G

**A GUIDE FOR FEDERAL EMPLOYEE
OMBUDS**

**A SUPPLEMENT TO AND ANNOTATION OF THE STANDARDS FOR THE
ESTABLISHMENT AND OPERATIONS OF OMBUDS OFFICES ISSUED BY THE
AMERICAN BAR ASSOCIATION**

**Coalition of Federal Ombudsmen (CFO) and Federal
Interagency ADR Working Group Steering Committee**

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FOREWORD

This Guide, developed by the Coalition of Federal Ombudsmen (CFO) and the Federal Interagency Alternative Dispute Resolution Working Group (IADRWG) Steering Committee, builds upon the Standards For The Establishment And Operation Of Ombuds Offices issued February 2004 by the American Bar Association (ABA) and is intended only for use by federal employee Ombuds in connection with their functions for the federal government. [Currently, the CFO, the International Ombudsman Organization (IOA), the United States Ombudsman Association (USOA), the Forum of Canadian Ombudsman, the European Union's Ombudsman and most other Ombudsman organizations continue to use the term "Ombudsman." However, the term "Ombuds" is found in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, et seq. ("ADRA"), as well as in the ABA Standards that serve as the basis for this Guide. Accordingly, and to maintain gender neutrality, the Steering Committee and CFO have opted to use "Ombuds" for purposes of this Guide.]

Federal agencies establishing an Ombuds function, whether by mandate or administrative action, may wish to use the ABA Standards, which are set forth below in their entirety. However, there are specific areas, unique to federal Ombuds practice, that require additional practical guidance. For these areas – in particular, confidentiality, including the provision of notice, reporting and record keeping – the CFO and IADRWG Steering Committee have developed Federal Guidance Notes, which follow each of the pertinent ABA Standards and are set out in italics.

NOTE: *This Guide applies solely to the internal management and operations of the federal executive branch. It is not intended to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Questions regarding interpretations of this Guide should be brought to the Office of the General Counsel or Legal Counsel in each department or agency. In addition, federal employee Ombuds must look to their Ombuds charters and to agency rules, regulations, directives and policies for guidance specific to their agencies.*

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¹
**STANDARDS FOR THE ESTABLISHMENT AND OPERATION OF OMBUDS
OFFICES
REVISED FEBRUARY, 2004**

¹ The ABA proposed a resolution of February 2004 that supports “the greater use of ‘Ombuds’ to receive, review, and resolve complaints involving public and private entities” and endorsed Standards for the Establishment and Operation of Ombuds Offices. These standards modify those Standards in four regards. First, they clarify the issue of notice in Paragraph F; secondly, they modify the limitations on the Ombud’s authority; third, they provide for a new category for executive Ombuds that is described in Paragraph H; and fourth, they modify the definition of legislative Ombuds and the standards applicable to them to make them conform to the new category of executive Ombuds. The 2004 Standards, in turn, expand on a 1969 ABA resolution to address independence, impartiality, and confidentiality as essential characteristics of Ombuds who serve internal constituents, Ombuds in the private sector, and Ombuds who also serve as advocates for designated populations.

PREAMBLE

² Ombuds receive complaints and questions from individuals concerning people within an entity or the functioning of an entity. They work for the resolution of particular issues and, where appropriate, make recommendations for the improvement of the general administration of the entities they serve. Ombuds protect: the legitimate interests and rights of individuals with respect to each other; individual rights against the excesses of public and private bureaucracies; and those who are affected by and those who work within these organizations.

Federal, state and local governments, academic institutions, for-profit businesses, non-profit organizations, and sub-units of these entities have established Ombuds offices but with enormous variation in their duties and structures.

Ombuds offices so established may be placed in several categories: A Legislative Ombuds is a part of the legislative branch of government and addresses issues raised by the general public or internally, usually concerning the actions or policies of government entities, individuals or contractors with respect to public accountability. An Executive Ombuds may be located in either the public or private sector and receives complaints concerning actions and omissions of the entity, its officials, employees and contractors; an Executive Ombuds may work either to hold the entity or one of its programs accountable or work with entity officials to improve the performance of a program. An Organizational Ombuds may be located in either the public or private sector and ordinarily addresses problems presented by members, employees, or contractors of an entity concerning its actions or policies. An Advocate Ombuds may be located in either the public or private sector and, like the others, evaluates claims objectively but is authorized or required to advocate on behalf of individuals or groups found to be aggrieved.

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The term Ombuds in this report is intended to encompass all other forms of the word, such as Ombudsperson, Ombuds Officer, and Ombudsman, a Swedish word meaning agent or representative. The use of Ombuds here is not intended to discourage others from using other terms.

As a result of the various types of offices and the proliferation of different processes by which the offices operate, individuals who come to the Ombuds office for assistance may not know what to expect, and the offices may be established in ways that compromise their effectiveness. The standards put forth here were developed to provide advice and guidance on the structure and operation of federal Ombuds offices so that Ombuds may fulfill their functions better and so that individuals who avail themselves of aid may do so with greater confidence in the integrity of the process. Practical and political considerations may require variations from these Standards, but it is urged that such variations be eliminated over time.

The essential characteristics of a federal Ombuds are:

- independence
- impartiality in conducting inquiries and investigations, and
- confidentiality

Subsequent Update to ABA Standards:

On November 1, 2004, new sentencing guidelines were issued by the United States Sentencing Commission, 2004 Federal Sentencing Guidelines. These guidelines were updated in compliance with the Sarbanes-Oxley (SOX) Act. These guidelines were issued after the issuance of the ABA standards but specifically relate to the existence and establishment of an Ombuds office.

Amendment 673 of the guidelines states that determination of fines for any publicly traded organization found guilty should be based on the seriousness of the offense and the culpability of the organization. The two factors that mitigate the ultimate punishment of an organization are: (i) the existence of an effective compliance and ethics program; and (ii) self-reporting, cooperation, or acceptance of responsibility. One of the primary aspects of an effective compliance and ethics program is to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation." While the word Ombuds was not used, the "anonymity and confidentiality without fear of retaliation" language suggests the presence of an Ombuds and some federal regulatory entities have noted the need for and encouraged the use of Ombuds. Since many of the SOX requirements are being required in Federal operations, this may be a future area of consideration when developing an Ombuds office.

ESTABLISHMENT AND OPERATIONS

A. An entity undertaking to establish an Ombuds should do so pursuant to a legislative enactment or a publicly available written policy (the "charter"), which clearly sets forth the role and jurisdiction of the Ombuds and which authorizes the Ombuds to

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(1) receive complaints and questions about alleged acts, omissions, improprieties, and systemic problems within the Ombuds' jurisdiction as defined in the charter establishing the office

(2) exercise discretion to accept or decline to act on a complaint or question

(3) act on the Ombuds' own initiative to address issues within the Ombuds' prescribed jurisdiction

(4) operate by fair and timely procedures to aid in the just resolution of a complaint or problem

(5) gather relevant information and require the full cooperation of the program over which the Ombuds has jurisdiction

(6) resolve issues at the most appropriate level of the entity

(7) function by means such as:

(a) conducting an inquiry

(b) investigating and reporting findings

(c) developing, evaluating, and discussing options available to affected individuals

(d) facilitating, negotiating, and mediating

(e) making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them

(f) identifying complaint patterns and trends

(g) educating

(h) issuing periodic reports, and

(i) advocating on behalf of affected individuals or groups when specifically authorized by the charter

(8) initiate litigation to enforce or protect the authority of the office as defined by the charter, as otherwise provided by these standards, or as required by law.

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Federal Guidance Notes: *Although federal Ombuds offices generally are established under statutes, regulations and a variety of directives and memoranda, rather than formal charter documents, for purposes of this Supplement, we will refer to these sources of Ombuds authority as “charters.” Ombuds charters should set forth the scope of the Ombuds’ responsibilities and related matters dealing with how the Ombuds is to function within the federal organization.*

Many federal Ombuds are chartered specifically to deal with employment concerns. Consistent with collective bargaining obligations and agreements, Ombuds’ charters also may authorize Ombuds to participate in the resolution of bargaining-unit employee disputes. In this regard, the collective bargaining agreements should address the Ombuds role in employment dispute resolution. See the Federal Guidance Note below following the ABA’s Standard regarding “Limitations on the Ombuds’ Authority.” With respect to the above Standard, where an Ombuds serves in some capacity as a dispute resolution neutral, the Ombuds should consult two other documents prepared and being issued concurrently with this Guide by the Interagency ADR Working Group Steering Committee, namely “A Guide for Federal Employee Mediators” and “Protecting the Confidentiality of Dispute Resolution Proceedings: A Guide for Federal Workplace ADR Program Administrators”.

Federal Ombuds should be aware that there are statutory provisions and there also may be regulatory provisions or internal agency guidance that may impact on the Ombuds’ functions in dealing with bargaining-unit employees, in particular those under the Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71. In this regard, certain individuals may not be excluded from a federal mediation, if their attendance and/or participation is mandated by federal law. For example, the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7114(A)(2)(a), entitles a labor organization representing bargaining unit employees to be represented at any “formal discussion” between one or more representatives of an agency and one or more employees in the unit the union represents. This right has been interpreted by the Federal Labor Relations Authority and the U.S. Court of Appeals for the District of Columbia as applying to mediation of formal EEO complaints when the complainant is a bargaining unit employee. See, e.g., *Dep’t of the Air Force, 436th Airlift Wing, Dover AFB v. FLRA*, 316 F.3d 280 (D.C. Cir. 2003); *Luke Air Force Base, Ariz.*, 54 F.L.R.A. 716 (1998), rev’d, 208 F.3d 221 (9th Cir. 1999). Federal employee mediators should consult with the agency’s ADR Program official, a Labor Relations Officer, labor counsel or other appropriate official when confronted with an issue of union attendance in a federal mediation pursuant to its “formal discussion” rights and to assure compliance with all such statutory, regulatory or other requirements.

For those federal agencies whose Ombuds charters authorize initiation of litigation (per Standard A (8) above), the Ombuds should be mindful of their obligations regarding the maintenance of confidentiality whenever they prosecute such litigation.

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QUALIFICATIONS

B. An Ombuds should be a person of recognized knowledge, judgment, objectivity, and integrity. The establishing entity should provide the Ombuds with relevant education and the periodic updating of the Ombuds' qualifications.

INDEPENDENCE, IMPARTIALITY, AND CONFIDENTIALITY

C. To ensure the effective operation of an Ombuds, an entity should authorize the Ombuds to operate consistently with the following essential characteristics. Entities that have established Ombuds offices that lack appropriate safeguards to maintain these characteristics should take prompt steps to remedy any deficiency.

(1) Independence. The Ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.

In assessing whether an Ombuds is independent in structure, function, and appearance, the following factors are important: whether anyone who may be affected by actions of the Ombuds office (a) can control or limit the Ombuds' performance of assigned duties, or (b) can (1) eliminate the office, (2) remove the Ombuds, or (3) reduce the budget or resources of the office for retaliatory purposes.

(2) Impartiality in Conducting Inquiries and Investigations. The Ombuds conducts inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest. Impartiality does not preclude the Ombuds from developing an interest in securing changes that are deemed necessary as a result of the process, nor from otherwise being an advocate on behalf of a designated constituency. The Ombuds may become an advocate within the entity for change where the process demonstrates a need for it.

(3) Confidentiality. An Ombuds does not disclose and is not required to disclose any information provided in confidence, except to address an imminent risk of serious harm. Records pertaining to a complaint, inquiry, or investigation are confidential and not subject to disclosure outside the Ombuds' office. An Ombuds does not reveal the identity of a complainant without that person's express consent. An Ombuds may, however, at the Ombuds' discretion, disclose non-confidential information and may disclose confidential information so long as doing so does not reveal its source. An Ombuds should discuss any exceptions to the Ombuds' maintaining confidentiality with the source of the information

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Federal Guidance Notes: The independence of an Ombuds Office is a fundamental prerequisite to its effective operations. To ensure this independence, the federal Ombuds should, if possible, report and have direct access to the highest agency official. If the Ombuds reports to a designee, it is critical that the reporting relationship not present a conflict that would impact adversely the integrity, independence and impartiality of the Ombuds. Thus, it would not be appropriate for an Ombuds who is called upon to resolve employment related matters to report to the agency's Director of Human Resources, even as the designee of an agency head.

All federal employees, including federal employee Ombuds, are obligated to report incidents of fraud, waste and abuse in conjunction with the operation of federal programs and to cooperate with duly authorized federal investigative agencies and organizations. Indeed, federal Ombuds practice should be designed to facilitate reporting by federal employees raising allegations of possible fraud, waste and abuse, in part so that meaningful recommendations may be developed by the Ombuds (and forwarded to those having authority to act upon such recommendations) aimed at eradicating systemic conditions that foster fraud, waste and abuse. Also, on occasion, a federal Ombuds might have to respond to Congressional or agency management inquiries pertaining to possible fraud, waste and abuse within the agency. By the same token, the maintenance of confidentiality is of paramount importance to the effectiveness of federal Ombuds programs. To that end, Ombuds charters should expressly affirm the criticality to the Ombuds process of maintaining confidentiality. Moreover, Ombuds should be aware that, where they serve as neutrals, the Administrative Dispute Resolution Act of 1996 ("ADR Act") specifically protects against disclosure of "dispute resolution communications. A federal Ombuds thus may be presented with a conflict between (1) his/her confidentiality obligations and (2) his/her obligations to report fraud, waste or abuse. Situations may develop, for example, where employees who contact the Ombuds and describe circumstances involving fraud, waste or abuse, advise the Ombuds that they are not themselves willing to report such fraud, waste or abuse to appropriate agency officials. For all such instances where potential conflicts may arise, it is essential that federal Ombuds have access to independent or properly insulated legal counsel, in order to obtain competent advice regarding the resolution of conflicts.

³ A Legislative Ombuds should not be required to discuss confidentiality with government officials and employees when applying this paragraph to the extent that an applicable statute makes clear that such an individual may not withhold information from the Ombuds and that such a person has no reasonable expectation of confidentiality with respect to anything that person provides to the Ombuds.

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In terms of record keeping, federal Ombuds' records may be subject to regulations administered by the U.S. National Archives & Records Administration (NARA), an independent federal agency that determines which records and reports should be maintained in accordance with the Federal Records Act. In this regard, a distinction should be drawn among three categories of Ombuds-related documents: (1) programmatic records related to the development and administration of the Ombuds program, including documents containing the Ombuds' recommendations to higher authority for correcting systemic problems and the like; (2) statistical data reflecting conflict and issue trends – maintained by the Ombuds in a manner that respects confidentiality (by containing no information by which individuals can be identified); and (3) the Ombuds' notes that are created in the context of work on specific cases. Whereas, the first and second categories of documents would be considered as "federal records," Ombuds' case notes ordinarily would not be regarded as "federal records," pursuant to NARA regulations, so long as they are not "circulated or made available to employees, other than the creator, for official purposes, such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and . . . contain unique information, such as substantive annotations or comments included therein, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities. " 36 CFR 1222.34(c). Federal Ombuds offices should review agency record development and retention procedures and, whenever needed, should consult agency counsel and records officers for guidance as to the creation, maintenance and destruction of records. In addition, Federal Ombuds should become familiar with their obligations for complying with the Freedom of Information Act (FOIA) (including the FOIA exemption provided under the ADR Act, applicable when Ombuds are serving as neutrals) as well as the Privacy Act, and should seek counsel to resolve any questions with regard to those statutes.

LIMITATIONS ON THE OMBUDS' AUTHORITY

D. An Ombuds should not, nor should an entity expect or authorize an Ombuds to:

- (1) make, change or set aside a law, policy, or administrative decision
- (2) make binding decisions or determine rights
- (3) directly compel an entity or any person to implement the Ombuds' recommendations
- (4) conduct an investigation that substitutes for administrative or judicial proceedings
- (5) accept jurisdiction over an issue that is currently pending in a legal forum unless all parties and the presiding officer in that action explicitly consent

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(6) address any issue arising under a collective bargaining agreement or which falls within the purview of any federal, state, or local labor or employment law, rule, or regulation, unless there is no collective bargaining representative and the employer specifically authorizes the ombuds to do so⁴, or

(7) act in a manner inconsistent with the grant of and limitations on the jurisdiction of the office when discharging the duties of the office of the Ombuds.

Federal Guidance Notes: *Notwithstanding Standard D(5), it is recognized that an Ombuds working in government may be expected to remain involved in matters pertaining to public accountability and legislative oversight, whether or not a related issue is the subject of pending litigation. Ombuds charters may explicitly state that the Ombuds has the power to investigate “without regard to the finality of the administrative act” and thus to continue involvement in an issue, regardless of its status in terms of litigation.*

Standard D(6) provides that Ombuds may not “address” issues arising under a collective bargaining agreement, or an issue involving federal, state or local labor or employment law, rule or regulation, but implies that Ombuds may do so where “there is no collective bargaining representative” and where “the employer specifically authorizes the Ombuds to do so.” Charters for federal Ombuds frequently provide specific authority for the Ombuds to deal with employment related matters and, indeed, the sole focus of the federal Ombuds in many instances is in the area of employee related issues in controversy. Ombuds may also be specifically authorized to address issues “under a collective bargaining agreement or issues involving federal, state or local labor or employment law or regulation,” either by language included within the collective bargaining agreements themselves, within memoranda of agreement between labor unions and federal agencies, or through some other authorizing documents. Where such authority has been conveyed to an Ombuds, the above Standard D(6) does not apply, and does not limit the Ombuds’ involvement in federal employment matters. See the Federal Guidance Notes following ‘Establishment and Operations’ and ‘Independence, Impartiality, Confidentiality’ Standards.

⁴ Under these Standards, the employer may authorize an Ombuds to address issues of labor or employment law only if the entity has expressly provided the Ombuds with the confidentiality specified in Paragraph C(3). An Ombuds program as envisioned by these Standards supplements and does not substitute for other procedures and remedies necessary to meet the duty of employers to protect the legal rights of both employers and employees.

REMOVAL FROM OFFICE

E. The charter that establishes the Office of the Ombuds also should provide for the discipline or removal of the Ombuds from office for good cause by means of a fair procedure.

***Federal Guidance Notes:** The procedure and grounds for discipline and/or removal of a federal Ombuds are controlled by 5 U.S.C. Chapter 75.*

NOTICE

F. An Ombuds is intended to supplement, not replace, formal procedures⁵. Therefore:
(1) An Ombuds should provide the following information in a general and publicly available manner and inform people who contact the Ombuds for help or advice that –

(a) the Ombuds will not voluntarily disclose to anyone outside the Ombuds office, including the entity in which the Ombuds acts, any information the person provides in confidence or the person's identity unless necessary to address an imminent risk of serious harm or with the person's express consent

(b) important rights may be affected when formal action is initiated and if notice is given to the entity

(c) communications to the Ombuds may not constitute notice to the entity unless the Ombuds communicates with representatives of the entity as described in Paragraph 2

(d) working with the Ombuds may address the problem or concern effectively but may not protect the rights of either the complainant or the entity in which the Ombuds⁶ operates

(e) the Ombuds is not anyone's lawyer, representative, or counselor or a substitute for any of these, and

(f) the complainant may wish to consult a lawyer or other appropriate resource with respect to those rights.

⁶ The notice requirements of Paragraph F do not supersede or change the advocacy responsibilities of an Advocate Ombuds.

⁵ An Ombuds program, as envisioned by these Standards, supplements, and does not substitute for, the need of an entity to establish formal procedures to protect legal rights and to address allegedly inappropriate or wrongful behavior or conduct.

(2) If the Ombuds communicates⁷ with representatives of the entity concerning an allegation of a violation, and –

(a) the communication that reveals the facts of

(i) a specific allegation and the identity of the complainant

(ii) allegations by multiple complainants that may reflect related behavior or conduct that is either inappropriate or wrongful

then the communication should be regarded as providing notice to the entity of the alleged violation and the complainants should be advised that the Ombuds communicated their allegations to the entity; otherwise,

(b) whether or not the communication constitutes notice to the entity is a question that should be determined by the facts of the communication.

(3) If an Ombuds functions in accordance with Paragraph C, “Independence, Impartiality, and Confidentiality,” of these standards, then-

(a) no one, including the entity in which the Ombuds operates, should deem the Ombuds to be an agent of any person or entity, other than the Office of the Ombuds, for purposes of receiving notice of alleged violations, and

(b) communications made to the Ombuds should not be imputed to anyone else, including the entity in which the Ombuds acts unless the Ombuds communicates with representatives of the entity, as described in Paragraph 2.

Federal Guidance Notes: *Where the employee raising an issue with a federal Ombuds wishes to remain anonymous, the Ombuds, acting as a conduit for the employee and at the employee’s request, may provide notice to the federal agency or other federal entity, to the extent notice is possible with an anonymous report, and should provide notice in such a way that anonymity is maintained. It is recognized that, in more instances than not, if the complainant remains anonymous, the communication by the Ombuds to the agency/entity may not have the effect of placing the agency/entity on notice.*

If the employee does not wish to remain anonymous, the Ombuds should direct the employee to the proper office within the agency/entity, in order to provide his/her own notice, and should either furnish the employee with information regarding what time limitations may apply or direct the employee to where such information may be under these Standards, any such communication is subject to Paragraph C(3). obtained. In other instances, the Ombuds may make recommendations for the resolution of a systemic problem to those persons who have the authority to act upon them.

LEGISLATIVE OMBUDS

G. A Legislative Ombuds is established by the legislature as part of the legislative branch who receives complaints from the general public or internally and addresses actions and omissions of a government agency, official, public employee, or contractor.

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In addition to and in clarification of the standards contained in Paragraphs AF, a Legislative Ombuds should:

- (1) be appointed by the legislative body or by the executive with confirmation by the legislative body⁸
- (2) be authorized to work to hold agencies within the jurisdiction of the office accountable to the public and to assist in legislative oversight of those agencies
- (3) be authorized to conduct independent and impartial investigations into matters within the prescribed jurisdiction of the office
- (4) have the power to issue subpoenas for testimony and evidence with respect to investigating allegations within the jurisdiction of the office
- (5) be authorized to issue public reports, and
- (6) be authorized to advocate for change both within the entity and publicly.

⁸ This restates the 1969 ABA Resolution, which remains ABA policy, that a Legislative Ombuds should be “appoint[ed] by the legislative body or...by the executive with confirmation by the designated proportion of the legislative body, preferably more than a majority, such as two-thirds.”

EXECUTIVE OMBUDS

H. An Executive Ombuds may be located in either the public or private sector and receives complaints from the general public or internally and addresses actions and omissions of the entity, its officials, employees, and contractors. An Executive Ombuds may work either to hold the entity or specific programs accountable or work with officials to improve the performance of a program. In addition to and in clarification of the standards contained in Paragraphs AF, an Executive Ombuds:

- (1) should be authorized to conduct investigations and inquiries
- (2) should be authorized to issue reports on the results of the investigations and inquiries, and
- (3) if located in government, should not have general jurisdiction over more than one agency but may have jurisdiction over a subject matter that involves multiple agencies.

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***Federal Guidance Notes:** In addition to general federal executive Ombuds, some agencies have been directed by statutes and regulations to create an Ombuds position to perform specific functions. For example, Section 16.505 of the Federal Acquisition Regulation (FAR) requires federal agency heads to create “task-order” and “delivery-order” Ombuds for use in connection with multiple award indefinite quantity/indefinite delivery type acquisitions. There is great variation among federal agencies in the operations of these special purpose Ombuds. Charters for such Ombuds should be precise regarding the Ombuds’ location and scope of authority.*

ORGANIZATIONAL OMBUDS

I. An Organizational Ombuds facilitates fair and equitable resolution of concerns that arise within an entity. In addition to and in clarification of the standards contained in Paragraphs A-F, an Organizational Ombuds should:

- (1) be authorized to undertake inquiries and function by informal processes as specified by the charter
- (2) be authorized to conduct independent and impartial inquiries into matters within the prescribed jurisdiction of the office
- (3) be authorized to issue reports, and
- (4) be authorized to advocate for change within the entity

ADVOCATE OMBUDS

J. An Advocate Ombuds serves as an advocate on behalf of a population that is designated in the charter. In addition to and in clarification of the standards described in Paragraphs A-F, an Advocate Ombuds should:

- (1) have a basic understanding of the nature and role of advocacy
- (2) provide information, advice, and assistance to members of the constituency
- (3) evaluate the complainant’s claim objectively and advocate for change or relief when the facts support the claim
- (4) be authorized to represent the interests of the designated population with respect to policies implemented or adopted by the establishing entity, government agencies, or other organizations as defined by the charter
- (5) be authorized to initiate action in an administrative, judicial, or legislative forum when the facts warrant, and

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(6) the notice requirements of Paragraph F do not supersede or change the advocacy responsibilities of an Advocate Ombuds.

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APPENDIX H

EEO/ADR/Ombudsman Flowchart Comparison

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